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

FORM 8-K
CURRENT REPORT

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

Date of Report
(Date of earliest event reported)
June 22, 2015

MELA SCIENCES, INC.
(Exact name of registrant as specified in its charter)

Delaware	000-51481	13-3986004
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)
50 Buckhout Street, Suite 1 Irvington, New York		10533
(Address of principal executive offices)		(Zip Code)

Registrant's telephone number, including area code: (914) 591-3783

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Item 1.01. Entry into a Material Definitive Agreement.

Acquisition of Assets from PhotoMedex, Inc.

On June 22, 2015, the Company entered into an asset purchase agreement (the "Asset Purchase Agreement") with PhotoMedex Inc. and PhotoMedex Technology, Inc. pursuant to which the Company has purchased the XTRAC and VTRAC laser business from PhotoMedex, Inc. (the "Asset Purchase") for $42.5 million in cash and assumed certain business-related liabilities. The purchased assets include all of the accounts receivable, inventory and fixed and intangible assets of the business.

The Financing

On June 22, 2015, the Company entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") and related financing documents with entities affiliated with existing institutional investors in the Company providing for the issuance of $42.5 million aggregate principal amount (the "Financing") of senior secured notes (the "Notes"), senior secured convertible debentures (the "Debentures") and warrants (the "Warrants") to purchase 3.0 million shares of common stock at an exercise price of $0.75 per share. The Company sold $10.0 million aggregate principal amount of Notes bearing interest at 9% per year with a maturity date of the earlier of 30 days after the Company obtains stockholder approval of stock issuances under the Debentures and the Warrants or November 30, 2015. The Company also issued $32.5 million aggregate principal amount of Debentures that, subject to certain ownership limitations and stockholder approval conditions, will be convertible into approximately 43.3 million shares of Company common stock at an initial conversion price of $0.75 per share. The Debentures bear interest at the rate of 2.25% per year, and, unless previously converted, will mature on the five-year anniversary of the date of issuance. Under the terms of the Debentures and the Warrants, the issuances of shares of the common stock upon conversion of the Debentures and upon exercise of the Warrants are subject to stockholder approval of such issuances and an amendment to the Company's certificate of incorporation to increase the Company's authorized shares of common stock. Upon receipt of stockholder approval, the Company has also agreed to reprice outstanding warrants held by certain investors to reduce the exercise price to $0.75 per share.

The proceeds of the Financing were used to pay the purchase price of the Assets acquired under the Asset Purchase Agreement.

The Notes, Debentures and Warrants have not been registered under the Securities Act of 1933, as amended (the "Securities Act").

The Debentures and the Warrants are also subject to certain ownership limitations. The Warrants will expire five years from the date of issuance.

The Company has also entered into a Registration Rights Agreement with the investors pursuant to which the Company is obligated to file one or more registration statements with the Securities and Exchange Commission to register the resale of the shares of common stock issuable upon conversion of the Debentures and upon exercise of the Warrants.

The Company's obligations under the Debentures and the Notes are secured by a first priority lien on all of the Company's assets, except for the Company's intellectual property assets for which it has a second lien, pursuant to the terms of a security agreement ("Security Agreement") dated June 22, 2015 among the Company and the investors.

Pursuant to the Securities Purchase Agreement, until the date that no Debentures, Notes or Warrants remain outstanding, the investors have the right, but not the obligation, to participate in any financing that the Company undertakes, up to 50% of the aggregate amount of securities being offered.

The foregoing descriptions of the Securities Purchase Agreement, the Registration Rights Agreement, the Security Agreement, the Asset Purchase Agreement, the Warrants, the Notes and the Debentures are subject to, and qualified in their entirety by, such documents attached hereto as Exhibits 10.1, 10.2, 10.3, 10.4, 10.5, 4.1, 4.2 and 4.3, respectively, which are incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

Pursuant to the Asset Purchase Agreement, on June 22, 2015, the Company completed the acquisition from PhotoMedex Inc. and PhotoMedex Technology, Inc. of the XTRAC and VTRAC laser business from PhotoMedex, Inc. for $42.5 million in cash and the assumption of certain business-related liabilities. The purchased assets include all of the accounts receivable, inventory and fixed and intangible assets of the business. The information contained above in Item 1.01 is hereby incorporated by reference into this Item 2.01.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of the Registrant.

On June 22, 2015, the Company agreed to issue $32.5 million in principal amount of Debentures and $10.0 million in principal amount of Notes pursuant to the terms of the Securities Purchase Agreement. The information contained above in Item 1.01 is hereby incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

On June 22, 2015, the Company issued the Debentures, the Notes and the Warrants under the Securities Purchase Agreement in a transaction exempt from the registration requirements of the Securities Act under Section 4(a)(2) of the Securities Act.

Item 8.01. Other Events.

On June 23, 2015, the Company issued a press release announcing the Asset Purchase and the Financing. The Company’s press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired:

1. Audited Combined Carve-Out XTRAC/VTRAC Division (A Carve-Out of Photomedex, Inc.) combined balance sheets as of December 31, 2014 and 2013, and the related combined statements of comprehensive (loss) income, invested equity and cash flows for the years then ended, and the related notes to the combined carve-out financial statements.

2. Unaudited Combined Carve-Out XTRAC/VTRAC Division (A Carve-Out of Photomedex, Inc.) condensed combined balance sheets as March 31, 2015 (unaudited) and December 31, 2014 (audited) and the related condensed combined statements of comprehensive loss, invested equity and cash flows for the three months ended March 31, 2015 and 2014, and the related notes to the condensed combined carve-out financial statements

(b) Pro Forma Financial Information

The pro forma financial information required by this Item will be filed by amendment to this Form 8-K current report within the time period provided in Item 9.01(a)(4) of Form 8-K.

(c) None.

(d) Exhibits.

Exhibit No.	Description
4.1	Form of Common Stock Purchase Warrant.
4.2	Form of 9.0% Senior Secured Notes.
4.3	Form of 2.25% Senior Secured Convertible Debenture.
10.1	Form of Securities Purchase Agreement dated as of June 22, 2015 by and among the Company and parties identified on the signature pages thereto.
10.2	Registration Rights Agreement dated as of June 22, 2015 by and among the Company and parties identified on the signature pages thereto.
10.3	Security Agreement dated as of June 22, 2015 by and among the Company and parties identified on the signature pages thereto.
10.4	Asset Purchase Agreement dated as of June 22, 2015 by and among the Company and parties identified on the signature pages thereto.
10.5	Warrant Amendment Agreement dated as of June 22, 2015 by and among the Company and parties identified on the signature pages thereto.
99.1	Press Release dated June 23, 2015

SIGNATURE

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

MELA SCIENCES, INC.

By: /s/ Robert W. Cook
Robert W. Cook,
Chief Financial Officer

Date: June 23, 2015

COMBINED CARVE-OUT FINANCIAL STATEMENTS PHOTOMEDEX, INC. XTRAC/VTRAC DIVISION

Index to Combined Carve-Out Financial Statements

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Board of Directors
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We have audited the accompanying combined carve-out financial statements of the XTRAC/VTRAC division (a carve-out of PhotoMedex Inc.) (the "Division"), which comprise the combined balance sheets as of December 31, 2014 and 2013, and the related combined statements of comprehensive (loss) income, invested equity and cash flows for the years then ended, and the related notes to the combined carve-out financial statements.

Management's responsibility for the combined carve-out financial statements
Management is responsible for the preparation and fair presentation of these combined carve-out financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of combined carve-out financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility
Our responsibility is to express an opinion on these combined carve-out financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the combined carve-out financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the combined carve-out financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the combined carve-out financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the combined carve-out financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the combined carve-out financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion
In our opinion, the combined carve-out financial statements referred to above present fairly, in all material respects, the financial position of the XTRAC/VTRAC division as of December 31, 2014 and 2013, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Emphasis of matter
As discussed in Note 1, the Division is an integrated business of PhotoMedex Inc. and is not a standalone entity. The combined carve-out financial statements of the Division reflect the assets, liabilities, revenues and expenses directly attributable to the Division, as well as allocations deemed reasonable by management, to present the combined financial position, results of operations, changes in invested equity and cash flows of the Division on a standalone basis and do not necessarily reflect the combined financial position, results of operations, changes in invested equity and cash flows of the Division in the future or what they would have been had the Division been a separate, standalone entity during the periods presented. Our opinion is not modified with respect to this matter.

/s/ FAHN KANNE & CO. GRANT THORNTON ISRAEL

Tel-Aviv, Israel
May 27, 2015

XTRAC/VTRAC DIVISION (A CARVE-OUT OF PHOTOMEDEX, INC.)
COMBINED BALANCE SHEETS
(In thousands)

	December 31, 2014	December 31, 2013
ASSETS		
Current assets:		
Cash and cash equivalents	$ 255	$ -
Accounts receivable, net of allowance for doubtful accounts of $133 and $163, respectively	4,336	2,481
Inventories	2,270	4,601
Prepaid expenses and other current assets	269	178
Total current assets	7,130	7,260
Property and equipment, net	12,391	8,787
Goodwill	1,632	1,632
Patents and licensed technologies, net	4,859	6,089
Other intangible assets, net	2,574	2,944
Other assets, net	40	40
Total assets	$ 28,626	$ 26,752
LIABILITIES AND INVESTED EQUITY		
Current liabilities:		
Current portion of notes payable	$ 57	$ 57
Accounts payable	1,776	1,773
Accrued compensation and related expenses	408	542
Other accrued liabilities	402	434
Deferred revenues	140	223
Total current liabilities	2,783	3,029
Long-term liabilities:		
Notes payable, net of current maturities	25	82
Other accrued liabilities	96	57
Total liabilities	2,904	3,168
Commitment and contingencies (Note 9)		
Invested equity:		
Net investment in division	25,755	23,584
Accumulated other comprehensive loss	(33)	-
Total invested equity	25,722	23,584
Total liabilities and invested equity	$ 28,626	$ 26,752

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

XTRAC/VTRAC DIVISION (A CARVE-OUT OF PHOTOMEDEX, INC.)
COMBINED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(In thousands)

	For the Year Ended December 31,	
	2014	2013
Revenues	$ 30,582	$ 21,637
Cost of revenues	12,155	10,989
Gross profit	18,427	10,648
Operating expenses:		
Engineering and product development	1,266	1,179
Selling and marketing	13,040	9,439
General and administrative	3,960	4,359
	18,266	14,977
Income (loss) from operations before interest and other financing expense, net	161	(4,329)
Interest and other financing expense, net	(15)	-
Income (loss) from operations before income taxes	146	(4,329)
Income tax expense	-	-
Net income (loss)	$ 146	$ (4,329)
Other comprehensive loss:		
Foreign currency translation adjustments	$ (33)	$ -
Comprehensive income (loss)	$ 113	$ (4,329)

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

XTRAC/VTRAC DIVISION (A CARVE-OUT OF PHOTOMEDEX, INC.)
COMBINED STATEMENTS OF CHANGES IN INVESTED EQUITY
(In thousands)

	Net investment in Division	Accumulated Other Comprehensive Loss	Total
Balance, January 1, 2013	$ 18,695	$ -	$ 18,695
Stock-based compensation	1,578	-	1,578
Net loss	(4,329)	-	(4,329)
Net contributions from PhotoMedex	7,640	-	7,640
Balance, December 31, 2013	23,584	-	23,584
Stock-based compensation	1,446	-	1,446
Net income	146	-	146
Other comprehensive loss	-	(33)	(33)
Net contributions from PhotoMedex	579	-	579
Balance, December 31, 2014	$ 25,755	$ (33)	$ 25,722

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

XTRAC/VTRAC DIVISION (A CARVE OUT OF PHOTOMEDEX, INC.)
COMBINED STATEMENTS OF CASH FLOWS
(In thousands)

	For the Year Ended December 31,	
	2014	2013
Cash Flows From Operating Activities:		
Net income (loss)	$ 146	$ (4,329)
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:		
Depreciation and amortization	4,872	4,080
Provision for doubtful accounts	68	142
Stock-based compensation	1,446	1,578
Changes in operating assets and liabilities:		
Accounts receivable	(1,924)	(741)
Inventories	2,332	(2,640)
Prepaid expenses and other assets	(91)	(71)
Accounts payable	4	1,000
Accrued compensation and related expenses	(134)	(55)
Other accrued liabilities	7	(355)
Deferred revenues	(83)	(578)
Net cash provided by (used in) operating activities	6,643	(1,969)
Cash Flows From Investing Activities:		
Purchases of property and equipment	(112)	(147)
Lasers placed into service	(6,765)	(5,476)
Net cash used in investing activities	(6,877)	(5,623)
Cash Flows From Financing Activities:		
Payments on notes payable	(57)	(48)
Net contributions from PhotoMedex	579	7,640
Net cash provided by financing activities	522	7,592
Effect of exchange rate changes on cash	(33)	-
Net increase in cash and cash equivalents	255	-
Cash and cash equivalents, beginning of year	-	-
Cash and cash equivalents, end of year	$ 255	$ -

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

Note 1
The Division and Summary of Significant Accounting Policies:

The Division:

Background
PhotoMedex, Inc. XTRAC/VTRAC division (the "Division") is a part of two reportable segments within PhotoMedex, Inc. ("PhotoMedex") providing integrated disease management and aesthetic solutions to dermatologists that address skin diseases and conditions including psoriasis and vitiligo. As a Division, standalone financial statements were not historically prepared. The accompanying combined carve-out financial statements of the Division have been derived from PhotoMedex's historical accounting records and are presented on a standalone basis as if the operations had been conducted independently from PhotoMedex. No direct ownership relationship existed among all of the various legal entities comprising the division. Accordingly, PhotoMedex's net investment in these operations is shown in lieu of stockholders' equity in the combined carve-out financial statements. The combined carve-out financial statements include the assets, liabilities, revenues and expenses of the legal entities that are considered to comprise the division.

The Division is comprised of certain standalone legal entities for which discrete financial information was available, as well as portions of legal entities for which discrete financial information was not available. Discrete financial information was not available as PhotoMedex did not record every transaction at the division level, but rather at the PhotoMedex level. For shared entities for which discrete financial information was not available, allocation methodologies were applied to certain accounts to allocate amounts to the Division. The combined statements of comprehensive income (loss) include all revenues and costs directly attributable to the Division, including costs for facilities, functions and services used by the Division. Costs for certain functions and services performed by centralized PhotoMedex organizations were directed charged to the Division based on usage or other allocation methods.

PhotoMedex does not maintain separate cash management for divisions. Accordingly, cash and cash equivalents, debt and interest expense have not been allocated to the Division in the combined financial statements. Transactions between the Division and PhotoMedex were accounted for through PhotoMedex's net investment in the Division. Cash and cash equivalents in the combined balance sheet represent cash and cash equivalents held locally by certain foreign entities included as part of the Division. PhotoMedex's current and long-term debt was not pushed down to the Division's combined financial statements because it was not specifically identifiable to the Division.

All of the allocations and estimates in the combined financial statements were based on assumptions that the management of PhotoMedex believed were reasonable. However, the combined financial statements included herein may not be indicative of the financial position, results of operations and cash flows of the Division in the future or if the Division had been a separate, standalone entity during the periods presented.

Summary of Significant Accounting Policies:

Accounting Principles
The combined financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP").

Use of Estimates
The preparation of the combined carve-out financial statements in conformity with accounting principles generally accepted in the United States ("US GAAP") requires management to make estimates and assumptions that affect amounts reported of assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting periods. Actual results could differ from those estimates and be based on events different from those assumptions. As of December 31, 2014, the more significant estimates include revenue recognition, including valuation allowances of accounts receivable.

Fair Value Measurements

The Division measures and discloses fair value in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification 820, *Fair Value Measurements and Disclosures* ("ASC Topic 820"). ASC Topic 820 defines fair value, establishes a framework and gives guidance regarding the methods used for measuring fair value, and expands disclosures about fair value measurements. Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions there exists a three-tier fair-value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

- Level 1 - unadjusted quoted prices are available in active markets for identical assets or liabilities that the Division has the ability to access as of the measurement date.

- Level 2 – pricing inputs are other than quoted prices in active markets that are directly observable for the asset or liability or indirectly observable through corroboration with observable market data.

- Level 3 – pricing inputs are unobservable for the non-financial asset or liability and only used when there is little, if any, market activity for the non-financial asset or liability at the measurement date. The inputs into the determination of fair value require significant management judgment or estimation. Fair value is determined using comparable market transactions and other valuation methodologies, adjusted as appropriate for liquidity, credit, market and/or other risk factors.

This hierarchy requires the Division to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value.

The fair value of cash and cash equivalents are based on its demand value, which is equal to its carrying value. The estimated fair values of notes payable, short-term and long-term debt are based on borrowing rates that are available to the Division for loans with similar terms, collateral and maturity approximate the carrying values. Additionally, the carrying value of all other monetary assets and liabilities is estimated to be equal to their fair value due to the short-term nature of these instruments.

Derivative financial instruments are measured at fair value, on a recurring basis. The fair value of derivatives generally reflects the estimated amounts that the Division would receive or pay to terminate the contracts at the reporting dates, based on the prevailing currency prices and the relevant interest rates. Such measurement is classified within Level 2.

In addition to items that are measured at fair value on a recurring basis, there are also assets and liabilities that are measured at fair value on a nonrecurring basis. Assets and liabilities that are measured at fair value on a nonrecurring basis include certain long-lived assets including goodwill. As such, we have determined that each of these fair value measurements reside within Level 3 of the fair value hierarchy.

Accounts Receivable

The majority of the Division's accounts receivable are due from consumers, distributors (domestic and international), physicians and other entities in the medical field. Accounts receivable are most often due within 30 to 90 days and are stated at amounts due from customers net of an allowance for doubtful accounts. Accounts outstanding longer than the contractual payment terms are considered past due. The Division determines its allowance for doubtful accounts by considering a number of factors, including the length of time trade accounts receivable are past due, the Division's previous loss history, the customer's current ability to pay its obligation to the Division and available information about their credit risk, and the condition of the general economy and the industry as a whole. The Division writes off accounts receivable when they are considered uncollectible, and payments subsequently received on such receivables are credited to the allowance for doubtful accounts. The Division does not recognize interest accruing on accounts receivable past due.

Inventories
Inventories are stated at the lower of cost or market. Cost is determined to be purchased cost for raw materials and the production cost (materials, labor and indirect manufacturing cost, including sub-contracted work components) for work-in-process and finished goods. Cost is determined on the first-in, first-out method. Throughout the laser manufacturing process, the related production costs are recorded within inventory. Work-in-process is immaterial, given the typically short manufacturing cycle, and therefore is disclosed in conjunction with raw materials.

The Division's equipment for the treatment of skin disorders (e.g. the XTRAC for psoriasis or vitiligo) will either (i) be placed in a physician's office and remain the property of the Division (at which date such equipment is transferred to property and equipment) or (ii) be sold to distributors or physicians directly. The cost to build a laser, whether for sale or for placement, is accumulated in inventory.

Reserves for slow moving and obsolete inventories are provided based on historical experience and product demand. Management evaluates the adequacy of these reserves periodically based on forecasted sales and market trend.

Property, Equipment and Depreciation
Property and equipment are recorded at cost, net of accumulated depreciation. Excimer lasers-in-service are depreciated on a straight-line basis over the estimated useful life of five years. For other property and equipment, depreciation is calculated on a straight-line basis over the estimated useful lives of the assets, primarily three to seven years for computer hardware and software, furniture and fixtures, and machinery and equipment. Leasehold improvements are amortized over the lesser of the useful lives or lease terms. Expenditures for major renewals and betterments to property and equipment are capitalized, while expenditures for maintenance and repairs are charged as an expense as incurred. Upon retirement or disposition, the applicable property and equipment amounts are deducted from the accounts and any gain or loss is recorded in the statements of combined comprehensive (loss) income. Useful lives are determined based upon an estimate of either physical or economic obsolescence or both.

Management evaluates the realizability of property and equipment based on estimates of undiscounted future cash flows over the remaining useful life of the asset. If the amount of such estimated undiscounted future cash flows is less than the net book value of the asset, the asset is written down to fair value. As of December 31, 2014, no such write-down was required (see ***Impairment of Long-Lived Assets and Intangibles***).

Patent Costs and Licensed Technologies
Costs incurred to obtain or defend patents and licensed technologies are capitalized and amortized over the shorter of the remaining estimated useful lives or 8 to 12 years. Core and product technology was also recorded in connection with the XTRAC/VTRAC division and is being amortized on a straight-line basis over 10 years for core technology and 5 years for product technology. (See *Note 5* ***Patent and Licensed Technologies***).

Management evaluates the recoverability of intangible assets based on estimates of undiscounted future cash flows over the remaining useful life of the asset. If the amount of such estimated undiscounted future cash flows is less than the net book value of the asset, the asset is written down to fair value. As of December 31, 2014, no such write-down was required. (See ***Impairment of Long-Lived Assets and Intangibles***).

Other Intangible Assets
The other intangible assets which were determined to have definite useful lives are being amortized on a straight-line basis over ten years. Such assets primarily include customer relationships and trademarks. (See *Note 6*, ***Goodwill and Other Intangible Assets)***.

Management evaluates the recoverability of such other intangible assets based on estimates of undiscounted future cash flows over the remaining useful life of the asset. If the amount of such estimated undiscounted future cash flows is less than the net book value of the asset, the asset is written down to fair value. As of December 31, 2014 no such write-down was required. (See ***Impairment of Long-Lived Assets and Intangibles***).

(in thousands)

Accounting for the Impairment of Goodwill

The Division evaluates the carrying value of goodwill annually at the end of the calendar year and also between annual evaluations if events occur or circumstances change that would more likely than not reduce the fair value of the reporting unit to which goodwill was allocated to below its carrying amount. Such circumstances could include, but are not limited to: (1) a significant adverse change in legal factors or in business climate, (2) unanticipated competition, or (3) an adverse action or assessment by a regulator. Goodwill impairment testing involves a two-step process. Step 1 compares the fair value of the Division's reporting units to which goodwill was allocated to their carrying values. If the fair value of the reporting unit exceeds its carrying value, no further analysis is necessary. The reporting unit fair value is based upon consideration of various valuation methodologies, including guideline transaction multiples, multiples of current earnings, and projected future cash flows discounted at rates commensurate with the risk involved. If the carrying amount of the reporting unit exceeds its fair value, Step 2 must be completed to quantify the amount of impairment. Step 2 calculates the implied fair value of goodwill by deducting the fair value of all tangible and intangible assets, excluding goodwill, of the reporting unit, from the fair value of the reporting unit as determined in Step 1. The implied fair value of goodwill determined in this step is compared to the carrying value of goodwill. If the implied fair value of goodwill is less than the carrying value of goodwill, an impairment loss, equal to the difference, is recognized.

Accrued Warranty Costs

The Division offers a standard warranty on product sales generally for a one to two-year period. In the case of domestic sales of XTRAC lasers, however, the Division has offered longer warranty periods, ranging from three to four years, in order to meet competition or meet customer demands. The Division provides for the expected cost of estimated future warranty claims on the date the product is sold. Total accrued warranty is included in other accrued liabilities on the combined balance sheets. The activity in the warranty accrual during the years ended December 31, 2014 and 2013 is summarized as follows:

	December 31,	
	2014	2013
Accrual at beginning of year	$ 261	$ 616
Additions charged to warranty expense	467	264
Expiring warranties	(246)	(323)
Claims satisfied	(250)	(296)
Total	232	261
Less: current portion	(136)	(204)
Long term accrued warranty	$ 96	$ 57

For extended warranty on the consumer products, see ***Revenue Recognition*** below.

Revenue Recognition

The Division recognizes revenues from the product sales when the following four criteria have been met: (i) the product has been delivered and the Division has no significant remaining obligations; (ii) persuasive evidence of an arrangement exists; (iii) the price to the buyer is fixed or determinable; and (iv) collection is reasonably assured. Revenues from product sales are recorded net of provisions for estimated chargebacks, rebates, expected returns and cash discounts.

The Division ships most of its products FOB shipping point, although from time to time certain customers, for example governmental customers, will be granted FOB destination terms. Among the factors the Division takes into account when determining the proper time at which to recognize revenue are (i) when title to the goods transfers and (ii) when the risk of loss transfers. Shipments to distributors or physicians that do not fully satisfy the collection criteria are recognized when invoiced amounts are fully paid or fully assured and included in deferred revenues until that time.

For revenue arrangements with multiple deliverables within a single, contractually binding arrangements (usually sales of products with separately priced extended warranty), each element of the contract is accounted for as a separate unit of accounting when it provides the customer value on a stand-alone basis and there is objective evidence of the fair value of the related unit.

With respect to sales arrangements under which the buyer has a right to return the related product, revenue is recognized only if all the following conditions are met: the price is fixed or determinable at the date of sale; the buyer has paid, or is obligated to pay and the obligation is not contingent on resale of the product; the buyer's obligation would not be changed in the event of theft or physical destruction or damage of the product; the buyer has economic substance; the Division does not have significant obligations for future performance to directly bring about resale of the product by the buyer; and the amount of future returns can be reasonably estimated.

Deferred revenues include amounts received with respect to extended warranty maintenance, repairs and other billable services and amounts not yet recognized as revenues. Revenues with respect to such activities are deferred and recognized on a straight-line basis over the duration of the warranty period, the service period or when service is provided, as applicable to each service.

The Division has two distribution channels for its phototherapy treatment equipment. The Division either (i) sells its lasers through a distributor or directly to a physician or (ii) places its lasers in a physician’s office (at no charge to the physician) and generally charges the physician a fee for an agreed upon number of treatments. In some cases, the Division and the customer stipulate to a quarterly or other periodic target of procedures to be performed, and accordingly revenue is recognized ratably over the period.

When the Division places a laser in a physician’s office, it generally recognizes service revenue based on the number of patient treatments performed, or purchased under a periodic commitment, by the physician. Amounts collected with respect to treatments to be performed through laser-access codes that are sold to physicians free of a periodic commitment, but not yet used, are deferred and recognized as a liability until the physician performs the treatment. Unused treatments remain an obligation of the Division because the treatments can only be performed on Division-owned equipment. Once the treatments are performed, this obligation has been satisfied.

The Division defers substantially all revenue from sales of treatment codes ordered by and performed to its customers within the last two weeks of the period in determining the amount of treatments performed by its physician-customers. Management believes this approach closely approximates the actual amount of unused treatments that existed at the end of a period.

Shipping and Handling Costs
Shipping and handling fees billed to customers are reflected as revenues while the related shipping and handling costs are included in selling and marketing expense. To date, shipping and handling costs have not been material.

Product Development Costs
Costs of research, new product development and product redesign are charged to expense as incurred in engineering and product development.

Advertising Costs
Advertising costs are charged to expenses as incurred, and are included in selling and marketing expenses in the combined statements of comprehensive income (loss)

Advertising expenses amounted to approximately $3,460 and $1,799 for the years ended December 31, 2014 and 2013, respectively.

Impairment of Long-Lived Assets and Intangibles
Long-lived assets, such as property and equipment, and definite-lived intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to the future undiscounted cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the asset exceeds its fair value As of December 31, 2014, no such impairment exists.

Income Taxes

For the periods presented, although the Division was included in the consolidated income tax returns of PhotoMedex, the Division's income taxes are computed and reported under the "separate return method". Use of the separate return method may result in differences when the sum of the amounts allocated to standalone tax provisions are compared with amounts presented in combined financial statements. Certain tax attributes, e.g., net operating loss carryforwards, which were reflected in the PhotoMedex consolidated financial statements may or may not exist at the standalone Division level. The Division's financial position and projections have been reviewed given the facts and circumstances as they existed at the historical dates presented. Any resulting net deferred tax assets were evaluated for recoverability and, accordingly, a valuation allowance was provided as it was more likely than not that all or some portion of the deferred tax asset will not be realized.

Adoption of New Accounting Standards

Effective January 1, 2014, the Division adopted Accounting Standard Update 2013-11, *Income Taxes (Topic 740): Presentation of an Unrecognized Tax Benefit When a Net Operating Loss Carryforward, a Similar Tax Loss, or a Tax Credit Carryforward Exists (a consensus of the FASB Emerging Issues Task Force)* ("ASU 2013-11").

The amendments in ASU 2013-11 state that an unrecognized tax benefit, or a portion of an unrecognized tax benefit, should be presented in the financial statements as a reduction to a deferred tax asset for a net operating loss carryforward, a similar tax loss, or a tax credit carryforward, except as follows: To the extent a net operating loss carryforward, a similar tax loss, or a tax credit carryforward is not available at the reporting date under the tax law of the applicable jurisdiction to settle any additional income taxes that would result from the disallowance of a tax position or the tax law of the applicable jurisdiction does not require the entity to use, and the entity does not intend to use, the deferred tax asset for such purpose, the unrecognized tax benefit should be presented in the financial statements as a liability and should not be presented net of deferred tax assets.

ASU 2013-11 applies to all entities that have unrecognized tax benefits when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists at the reporting date. For public companies the amendments in this ASU became effective for fiscal years, and interim periods within those years, beginning after December 15, 2013. The amendments were applied prospectively to all unrecognized tax benefits that existed at the effective date.

The adoption of the standard did not have a material impact on the Division's combined results of operations and financial condition.

Effective January 1, 2014, the Division adopted Accounting Standards Update 2013-5, *Foreign Currency Matters (Topic 830) Parent's Accounting for the Cumulative Translation Adjustment upon Derecognition of Certain Subsidiaries or Groups of Assets within a Foreign Entity or of an Investment in a Foreign Entity* ("ASU 2013-5").

ASU 2013-5 clarifies that, when a reporting entity (parent) ceases to have a controlling financial interest in a subsidiary or group of assets that is a business (other than a sale of in-substance real estate or conveyance of oil and gas mineral rights) within a foreign entity, the parent is required to apply the guidance in Subtopic 830-30 to release any related cumulative translation adjustment into net income. Accordingly, the cumulative translation adjustment should be released into net income only if the sale or transfer results in the complete or substantially complete liquidation of the foreign entity in which the subsidiary or group of assets had resided. ASU 2013-5 also clarifies that if the business combination achieved in stages relates to a previously held equity method investment (step-acquisition) that is a foreign entity, the amount of accumulated other comprehensive income that is reclassified and included in the calculation of gain or loss shall include any foreign currency translation adjustment related to that previously held investment.

For public companies, the amendments in this Update became effective prospectively for fiscal years (and interim reporting periods within those years) beginning after December 15, 2013. In accordance with the transition requirements, the amendments were applied prospectively to derecognition events occurring after the effective date. Prior periods are not required be adjusted.

The adoption of the standard did not have a material impact on the Division's combined results of operations and financial condition.

Recently Issued Accounting Standards
In May 2014, The FASB issued Accounting Standard Update 2014-09, *Revenue from Contracts with Customers (Topic 606)* ("ASU 2014-09").

ASU 2014-09 outlines a single comprehensive model to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. ASU 2014-09 also requires entities to disclose sufficient information, both quantitative and qualitative, to enable users of financial statements to understand the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers.

An entity should apply the amendments in this ASU using one of the following two methods: 1. Retrospectively to each prior reporting period presented with a possibility to elect certain practical expedients, or, 2. Retrospectively with the latter transition method, it also should provide certain additional disclosures.

For a public entity, the amendments in ASU 2014-09 are effective for annual reporting periods beginning after December 15, 2016, including interim periods within that reporting period (the first quarter of fiscal year 2017 for the Division). Early application is not permitted. The Division is in the process of assessing the impact, if any, of ASU 2014-09 on its combined financial statements.

In August 2014, the FASB issued Accounting Standards Update 2014-15, *Presentation of Financial Statements—Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* ("ASU 2014-15"). ASU 2014-15 provide guidance on management's responsibility in evaluating whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued (or within one year after the date that the financial statements are available to be issued when applicable). ASU 2014-15 also provide guidance related to the required disclosures as a result of management evaluation.

The amendments in ASU 2014-15 are effective for the annual period ending after December 15, 2016, and for annual periods and interim periods thereafter. Early application is permitted.

Note 2
Relationship with PhotoMedex, Inc.:

The Division businesses were managed and operated in the normal course of business with other affiliates of PhotoMedex, Inc. Accordingly certain shared costs were allocated to the Division and reflected as expenses in the standalone combined financial statements. Management of PhotoMedex considered the allocation methodologies used to be reasonable and appropriate reflections of the historical PhotoMedex expenses attributable to the Division for purposes of the standalone combined financial statements of the Division; however, the expenses reflected in the combined financial statements may not be indicative of the actual expenses that would be have been incurred during the periods presented if the Division had operated as a separate, standalone entity. In addition, the expenses reflected in the combined financial statements may not be indicative of related expenses that will be incurred in the future.

Except for the foreign entities included in the Division, the Division's cash management was part of PhotoMedex's subsidiary; PhotoMedex Technology, Inc. PhotoMedex Technology Inc. has a centralized cash management and financing program for all divisions and/or segments. As cash was disbursed and received by PhotoMedex (through its subsidiary), it was accounted for by the Division through PhotoMedex's net investment in the Division. All short and long-term debt requirements of the Division were financed by PhotoMedex.

(in thousands)

Note 3
Inventories:

	December 31,	
	2014	2013
Raw materials and work-in-process	$ 2,116	$ 4,280
Finished goods	154	321
Total inventories	$ 2,270	$ 4,601

Work-in-process is immaterial given the typically short manufacturing cycle, and therefore is disclosed in conjunction with raw materials.

Note 4
Property and Equipment:

	December 31,	
	2014	2013
Lasers-in-service	$ 18,805	$ 12,389
Equipment, computer hardware and software	228	166
Furniture and fixtures	331	280
Leasehold improvements	36	83
	19,400	12,918
Accumulated depreciation and amortization	(7,009)	(4,131)
Total property and equipment, net	$ 12,391	$ 8,787

Related depreciation and amortization expense was $3,272 in 2014 and $2,480 in 2013.

Note 5
Patents and Licensed Technologies, net:

	December 31,	
	2014	2013
Gross Amount	$ 8,600	$ 8,600
Accumulated amortization	(3,741)	(2,511)
Net Book Value	$ 4,859	$ 6,089

Related amortization expense was $1,230 for each of the years ended December 31, 2014 and 2013, respectively.

Estimated amortization expense for amortizable patents and licensed technologies assets for the future periods is as follows:

2015	$ 1,230
2016	1,199
2017	490
2018	490
2019	490
Thereafter	960
Total	$ 4,859

(in thousands)

Note 6
Goodwill and Other Intangible Assets:

Goodwill that arose in connections with the prior period acquisition of businesses that are included in the operations of the Division, in the amount of $1,632, was allocated to the Division. Goodwill reflects the value or premium of the acquisition price in excess of the fair values assigned to specific tangible and intangible assets. Goodwill has an indefinite useful life and therefore is not amortized as an expense, but is reviewed annually for impairment of its fair value to the Division.

The Division has no accumulated impairment losses of goodwill related to the operations as of December 31, 2014.

Set forth below is a detailed listing of other definite-lived intangible assets:

	December 31, 2014			December 31, 2013		
	Trademarks	Customer Relationships	Total	Trademarks	Customer Relationships	Total
Gross Amount	$ 2,100	$ 1,600	$ 3,700	$ 2,100	$ 1,600	$ 3,700
Accumulated amortization	(639)	(487)	(1,126)	(429)	(327)	(756)
Net Book Value	$ 1,461	$ 1,113	$ 2,574	$ 1,671	$ 1,273	$ 2,944

Related amortization expense was $370 for each of the years ended December 31, 2014 and 2013. Customer Relationships embody the value to the Division of relationships the Division had formed with its customers. Tradename includes the names and various other trademarks associated with the Division's products (e.g. "XTRAC" and "VTRAC").

Estimated amortization expense for the above amortizable intangible assets for future periods is as follows:

2015	$ 370
2016	370
2017	370
2018	370
2019	370
Thereafter	724
Total	$ 2,574

Note 7
Accrued Compensation and related expenses:

	December 31,	
	2014	2013
Accrued payroll and related taxes	$ 61	$ 40
Accrued vacation	18	126
Accrued commissions and bonuses	329	376
Total accrued compensation and related expense	$ 408	$ 542

(in thousands)

Note 8
Other Accrued Liabilities:

	December 31,	
	2014	2013
Accrued warranty, current, see *Note 1*	$ 136	$ 204
Accrued sales and other taxes	257	207
Other accrued liabilities	9	23
Total other accrued liabilities	$ 402	$ 434

Note 9
Commitments and Contingencies:

Leases
The Division has entered into various non-cancelable operating lease agreements for real property and one minor operating lease for personal property. These arrangements expire at various dates through 2015. Rent expense was $458 and $392 for the years ended December 31, 2014 and 2013, respectively. The future annual minimum payments under these leases are as follows:

Year Ending December 31,	
2015	$ 280
Total	$ 280

Note 10
Income Taxes:

Income tax expense (benefit) for the Division was determined based on the “separate return method” since the Division was included in the consolidated income tax return of PhotoMedex for the periods presented. Any resulting net deferred tax assets were evaluated for recoverability and, accordingly, a 100% valuation allowance was provided as it was more likely than not that all or some portion of the deferred tax asset will not be realized.

Note 11
Significant Customer Concentration:

For the year ended December 31, 2014, revenues to the Division’s international master distributor (GlobalMed Technologies) were $7,141, or 23.3%, of total revenues for such period. For the year ended December 31, 2013, revenues earned from GlobalMed Technologies were $5,367, or 24.8%, of total revenues for such period. At December 31, 2014, the accounts receivable balance from GlobalMed Technologies was $553, or 12.8%, of total net accounts receivable. At December 31, 2013, the accounts receivable balance from GlobalMed Technologies was $221, or 4.8%, of total net accounts receivable.

Note 12
Business Segment and Geographic Data:

The operating segments of the Division, which have been based upon PhotoMedex’s management structure, products and services offered, markets served and types of customers, are as follows: The Physician Recurring segment derives its revenues from the XTRAC procedures performed by dermatologists and on the repair, maintenance and replacement parts on our various products. The Professional segment generates revenues from the sale of equipment, such as lasers. Management reviews financial information presented on an operating segment basis for the purposes of making certain operating decisions and assessing financial performance.

(in thousands)

Unallocated operating expenses include costs that are not specific to a particular segment but are general to the division; included are expenses incurred for administrative and accounting staff, general liability and other insurance, professional fees and other similar corporate expenses. Interest and other financing income (expense), net is also not allocated to the operating segments. Unallocated assets include cash and cash equivalents, prepaid expenses and deposits.

The following tables reflect results of operations from our business segments for the periods indicated below:

	Year ended December 31, 2014		
	PHYSICIAN RECURRING	PROFESSIONAL	TOTAL
Revenues	$ 25,557	$ 5,025	$ 30,582
Costs of revenues	8,498	3,657	12,155
Gross profit	17,059	1,368	18,427
Gross profit %	*66.7%*	*27.2%*	*60.3%*
Allocated operating expenses:			
Engineering and product development	1,004	262	1,266
Selling and marketing expenses	12,734	306	13,040
Unallocated operating expenses	-	-	3,960
	13,737	568	18,266
Income from operations	3,322	800	161
Interest and other financing expense, net	-	-	(15)
Income before taxes	$ 3,322	$ 800	$ 146

	Year ended December 31, 2013		
	PHYSICIAN RECURRING	PROFESSIONAL	TOTAL
Revenues	$ 17,675	$ 3,962	$ 21,637
Costs of revenues	7,959	3,030	10,989
Gross profit	9,716	932	10,648
Gross profit %	*55.0%*	*23.5%*	*49.2%*
Allocated operating expenses:			
Engineering and product development	938	241	1,179
Selling and marketing expenses	9,108	331	9,439
Unallocated operating expenses	-	-	4,359
	10,046	572	14,977
Income (loss) from operations	(330)	360	(4,329)
Interest and other financing expense, net	-	-	-
Income (loss) before taxes	$ (330)	$ 360	$ (4,329)

(in thousands)

For the years ended December 31, 2014 and 2013, revenues by geographic area (determined by ship to locations) were as follows:

	Year Ended December 31,	
	2014	2013
North America (only United States)	$ 23,293	$ 16,165
Asia Pacific [1]	5,188	4,124
Europe (including Israel)	2,061	1,319
South America	40	29
	$ 30,582	$ 21,637

[1] Japan	$ 1,218	$ 1,115

Note 13
Pending Transaction:

In May 2015, PhotoMedex entered into an asset purchase agreement with Mela Sciences Inc. to purchase the assets of the XTRAC/VTRAC division of PhotoMedex. The transaction is expected to be completed on May 29, 2015.

UNAUDITED COMBINED CARVE-OUT FINANCIAL STATEMENTS PHOTOMEDEX, INC.
XTRAC/VTRAC DIVISION

Index to Unaudited Combined Carve-Out Financial Statements

XTRAC/VTRAC DIVISION (A CARVE-OUT OF PHOTOMEDEX, INC.)
CONDENSED COMBINED BALANCE SHEETS
(In thousands)

	March 31, 2015 (Unaudited)	December 31, 2014
ASSETS		
Current assets:		
Cash and cash equivalents	$ 200	$ 255
Accounts receivable, net of allowance for doubtful accounts of $163 and $133, respectively	4,765	4,336
Inventories	2,467	2,270
Prepaid expenses and other current assets	627	269
Total current assets	8,059	7,130
Property and equipment, net	13,258	12,391
Goodwill	1,632	1,632
Patents and licensed technologies, net	4,551	4,859
Other intangible assets, net	2,482	2,574
Other assets, net	40	40
Total assets	$ 30,022	$ 28,626
LIABILITIES AND INVESTD EQUITY		
Current liabilities:		
Current portion of notes payable	$ 57	$ 57
Accounts payable	2,762	1,776
Accrued compensation and related expenses	592	408
Other accrued liabilities	501	402
Deferred revenues	295	140
Total current liabilities	4,207	2,783
Long-term liabilities:		
Notes payable, net of current maturities	11	25
Other accrued liabilities	141	96
Total liabilities	4,359	2,904
Commitment and contingencies		
Invested equity:		
Net investment in division	25,696	25,755
Accumulated other comprehensive loss	(33)	(33)
Total invested equity	25,663	25,722
Total liabilities and invested equity	$ 30,022	$ 28,626

The accompanying notes are an integral part of these unaudited condensed combined financial statements.

XTRAC/VTRAC DIVISION (A CARVE-OUT OF PHOTOMEDEX, INC.)
CONDENSED COMBINED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands) (Unaudited)

	For the Three Months Ended March 31,	
	2015	2014
Revenues	$ 7,476	$ 6,061
Cost of revenues	3,264	2,884
Gross profit	4,212	3,177
Operating expenses:		
Engineering and product development	417	331
Selling and marketing	4,201	3,135
General and administrative	687	1,079
	5,305	4,545
Loss from operations before interest and other financing income, net	(1,093)	(1,368)
Interest and other financing income, net	5	-
Loss from operations before income taxes	(1,088)	(1,368)
Income tax expense	-	-
Net loss	$ (1,088)	$ (1,368)
Other comprehensive loss:		
Foreign currency translation adjustments	$ -	$ -
Comprehensive loss	$ (1,088)	$ (1,368)

The accompanying notes are an integral part of these unaudited condensed combined financial statements.

XTRAC/VTRAC DIVISION (A CARVE-OUT OF PHOTOMEDEX, INC.)
CONDENSED COMBINED STATEMENTS OF CHANGES IN INVESTED EQUITY
(In thousands) (Unaudited)

	Net investment in Division	Accumulated Other Comprehensive Loss	Total
Balance, January 1, 2015	$ 25,755	$ (33)	$ 25,722
Stock-based compensation	74	-	74
Net loss	(1,088)	-	(1,088)
Net contributions from PhotoMedex	955	-	955
Balance, March 31, 2015	$ 25,696	$ (33)	$ 25,663

The accompanying notes are an integral part of these unaudited condensed combined financial statements.

XTRAC/VTRAC DIVISION (A CARVE-OUT OF PHOTOMEDEX, INC.)
CONDENSED COMBINED STATEMENTS OF CASH FLOWS
(In thousands) (Unaudited)

	For the Three Months Ended March 31,	
	2015	2014
Cash Flows From Operating Activities:		
Net loss	$ (1,088)	$ (1,368)
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:		
Depreciation and amortization	1,372	1,074
Provision for doubtful accounts	44	9
Stock-based compensation	74	403
Changes in operating assets and liabilities:		
Accounts receivable	(473)	(372)
Inventories	(197)	306
Prepaid expenses and other assets	(358)	33
Accounts payable	986	(432)
Accrued compensation and related expenses	184	(10)
Other accrued liabilities	143	(5)
Deferred revenues	155	49
Net cash provided by (used in) operating activities	842	(313)
Cash Flows From Investing Activities:		
Purchases of property and equipment	(38)	(10)
Lasers placed into service	(1,795)	(1,717)
Net cash used in investing activities	(1,833)	(1,727)
Cash Flows From Financing Activities:		
Payments on notes payable	(14)	(14)
Net contributions from PhotoMedex	955	2,054
Net cash provided by financing activities	941	2,040
Effect of exchange rate changes on cash	(5)	-
Net increase in cash and cash equivalents	(55)	-
Cash and cash equivalents, beginning of year	255	-
Cash and cash equivalents, end of year	$ 200	$ -

The accompanying notes are an integral part of these unaudited condensed combined financial statements.

Note 1
The Division and Summary of Significant Accounting Policies:

The Division:

Background
PhotoMedex, Inc. XTRAC/VTRAC division (the "Division") is a part of two reportable segments within PhotoMedex, Inc. ("PhotoMedex") providing integrated disease management and aesthetic solutions to dermatologists that address skin diseases and conditions including psoriasis and vitiligo. As a Division, standalone financial statements were not historically prepared. The accompanying combined carve-out financial statements of the Division have been derived from PhotoMedex's historical accounting records and are presented on a standalone basis as if the operations had been conducted independently from PhotoMedex. No direct ownership relationship existed among all of the various legal entities comprising the division. Accordingly, PhotoMedex's net investment in these operations is shown in lieu of stockholders' equity in the combined carve-out financial statements. The combined carve-out financial statements include the assets, liabilities, revenues and expenses of the legal entities that are considered to comprise the division.

The Division is comprised of certain standalone legal entities for which discrete financial information was available, as well as portions of legal entities for which discrete financial information was not available. Discrete financial information was not available as PhotoMedex did not record every transaction at the division level, but rather at the PhotoMedex level. For shared entities for which discrete financial information was not available, allocation methodologies were applied to certain accounts to allocate amounts to the Division. The combined statements of comprehensive income (loss) include all revenues and costs directly attributable to the Division, including costs for facilities, functions and services used by the Division. Costs for certain functions and services performed by centralized PhotoMedex organizations were directed charged to the Division based on usage or other allocation methods.

PhotoMedex does not maintain separate cash management for divisions. Accordingly, cash and cash equivalents, debt and interest expense have not been allocated to the Division in the combined financial statements. Transactions between the Division and PhotoMedex were accounted for through PhotoMedex's net investment in the Division. Cash and cash equivalents in the combined balance sheet represent cash and cash equivalents held locally by certain foreign entities included as part of the Division. PhotoMedex's current and long-term debt was not pushed down to the Division's combined financial statements because it was not specifically identifiable to the Division.

All of the allocations and estimates in the combined financial statements were based on assumptions that the management of PhotoMedex believed were reasonable. However, the combined financial statements included herein may not be indicative of the financial position, results of operations and cash flows of the Division in the future or if the Division had been a separate, standalone entity during the periods presented.

Summary of Significant Accounting Policies:

Accounting Principles
Certain information and footnote disclosures normally required or included in annual financial statements prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP") have been condensed or omitted. The financial information contained herein is unaudited; however, management believes all adjustments have been made that are considered necessary to present fairly the Division's financial position and operating results for the interim periods. All such adjustments are of a normal recurring nature.

The accompanying combined balance sheet as of December 31, 2014 has been derived from the Division's audited combined financial statements included elsewhere in this filing.

The results for the three months ended March 31, 2015 are not necessarily indicative of the results to be expected for the year ending December 31, 2015 or for any other interim period or for any future period.

Use of Estimates

The preparation of the combined carve-out financial statements in conformity with accounting principles generally accepted in the United States ("US GAAP") requires management to make estimates and assumptions that affect amounts reported of assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting periods. Actual results could differ from those estimates and be based on events different from those assumptions. As of March 31, 2015, the more significant estimates include revenue recognition, including valuation allowances of accounts receivable.

Fair Value Measurements

The Division measures and discloses fair value in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification 820, *Fair Value Measurements and Disclosures* ("ASC Topic 820"). ASC Topic 820 defines fair value, establishes a framework and gives guidance regarding the methods used for measuring fair value, and expands disclosures about fair value measurements. Fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions there exists a three-tier fair-value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

- Level 1 - unadjusted quoted prices are available in active markets for identical assets or liabilities that the Division has the ability to access as of the measurement date.

- Level 2 – pricing inputs are other than quoted prices in active markets that are directly observable for the asset or liability or indirectly observable through corroboration with observable market data.

- Level 3 – pricing inputs are unobservable for the non-financial asset or liability and only used when there is little, if any, market activity for the non-financial asset or liability at the measurement date. The inputs into the determination of fair value require significant management judgment or estimation. Fair value is determined using comparable market transactions and other valuation methodologies, adjusted as appropriate for liquidity, credit, market and/or other risk factors.

This hierarchy requires the Division to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value.

The fair value of cash and cash equivalents are based on its demand value, which is equal to its carrying value. The estimated fair values of notes payable, short-term and long-term debt are based on borrowing rates that are available to the Division for loans with similar terms, collateral and maturity approximate the carrying values. Additionally, the carrying value of all other monetary assets and liabilities is estimated to be equal to their fair value due to the short-term nature of these instruments.

Derivative financial instruments are measured at fair value, on a recurring basis. The fair value of derivatives generally reflects the estimated amounts that the Division would receive or pay to terminate the contracts at the reporting dates, based on the prevailing currency prices and the relevant interest rates. Such measurement is classified within Level 2.

In addition to items that are measured at fair value on a recurring basis, there are also assets and liabilities that are measured at fair value on a nonrecurring basis. Assets and liabilities that are measured at fair value on a nonrecurring basis include certain long-lived assets including goodwill. As such, we have determined that each of these fair value measurements reside within Level 3 of the fair value hierarchy.

(in thousands)

Accounts Receivable

The majority of the Division's accounts receivable are due from consumers, distributors (domestic and international), physicians and other entities in the medical field. Accounts receivable are most often due within 30 to 90 days and are stated at amounts due from customers net of an allowance for doubtful accounts. Accounts outstanding longer than the contractual payment terms are considered past due. The Division determines its allowance for doubtful accounts by considering a number of factors, including the length of time trade accounts receivable are past due, the Division's previous loss history, the customer's current ability to pay its obligation to the Division and available information about their credit risk, and the condition of the general economy and the industry as a whole. The Division writes off accounts receivable when they are considered uncollectible, and payments subsequently received on such receivables are credited to the allowance for doubtful accounts. The Division does not recognize interest accruing on accounts receivable past due.

Inventories

Inventories are stated at the lower of cost or market. Cost is determined to be purchased cost for raw materials and the production cost (materials, labor and indirect manufacturing cost, including sub-contracted work components) for work-in-process and finished goods. Cost is determined on the first-in, first-out method. Throughout the laser manufacturing process, the related production costs are recorded within inventory. Work-in-process is immaterial, given the typically short manufacturing cycle, and therefore is disclosed in conjunction with raw materials.

The Division's equipment for the treatment of skin disorders (e.g. the XTRAC for psoriasis or vitiligo) will either (i) be placed in a physician's office and remain the property of the Division (at which date such equipment is transferred to property and equipment) or (ii) be sold to distributors or physicians directly. The cost to build a laser, whether for sale or for placement, is accumulated in inventory.

Reserves for slow moving and obsolete inventories are provided based on historical experience and product demand. Management evaluates the adequacy of these reserves periodically based on forecasted sales and market trend.

Accrued Warranty Costs

The Division offers a standard warranty on product sales generally for a one to two-year period. In the case of domestic sales of XTRAC lasers, however, the Division has offered longer warranty periods, ranging from three to four years, in order to meet competition or meet customer demands. The Division provides for the expected cost of estimated future warranty claims on the date the product is sold. Total accrued warranty is included in other accrued liabilities on the combined balance sheets. The activity in the warranty accrual during the years ended December 31, 2014 and 2013 is summarized as follows (unaudited):

	March 31,	
	2015	2014
Accrual at beginning of year	$ 232	$ 261
Additions charged to warranty expense	185	90
Expiring warranties	(89)	(48)
Claims satisfied	(19)	(64)
Total	309	239
Less: current portion	(168)	(169)
Long term accrued warranty	$ 141	$ 70

For extended warranty on the consumer products, see ***Revenue Recognition*** below.

Revenue Recognition

The Division recognizes revenues from the product sales when the following four criteria have been met: (i) the product has been delivered and the Division has no significant remaining obligations; (ii) persuasive evidence of an arrangement exists; (iii) the price to the buyer is fixed or determinable; and (iv) collection is reasonably assured. Revenues from product sales are recorded net of provisions for estimated chargebacks, rebates, expected returns and cash discounts.

The Division ships most of its products FOB shipping point, although from time to time certain customers, for example governmental customers, will be granted FOB destination terms. Among the factors the Division takes into account when determining the proper time at which to recognize revenue are (i) when title to the goods transfers and (ii) when the risk of loss transfers. Shipments to distributors or physicians that do not fully satisfy the collection criteria are recognized when invoiced amounts are fully paid or fully assured and included in deferred revenues until that time.

For revenue arrangements with multiple deliverables within a single, contractually binding arrangements (usually sales of products with separately priced extended warranty), each element of the contract is accounted for as a separate unit of accounting when it provides the customer value on a stand-alone basis and there is objective evidence of the fair value of the related unit.

With respect to sales arrangements under which the buyer has a right to return the related product, revenue is recognized only if all the following conditions are met: the price is fixed or determinable at the date of sale; the buyer has paid, or is obligated to pay and the obligation is not contingent on resale of the product; the buyer's obligation would not be changed in the event of theft or physical destruction or damage of the product; the buyer has economic substance; the Division does not have significant obligations for future performance to directly bring about resale of the product by the buyer; and the amount of future returns can be reasonably estimated.

Deferred revenues include amounts received with respect to extended warranty maintenance, repairs and other billable services and amounts not yet recognized as revenues. Revenues with respect to such activities are deferred and recognized on a straight-line basis over the duration of the warranty period, the service period or when service is provided, as applicable to each service.

The Division has two distribution channels for its phototherapy treatment equipment. The Division either (i) sells its lasers through a distributor or directly to a physician or (ii) places its lasers in a physician’s office (at no charge to the physician) and generally charges the physician a fee for an agreed upon number of treatments. In some cases, the Division and the customer stipulate to a quarterly or other periodic target of procedures to be performed, and accordingly revenue is recognized ratably over the period.

When the Division places a laser in a physician’s office, it generally recognizes service revenue based on the number of patient treatments performed, or purchased under a periodic commitment, by the physician. Amounts collected with respect to treatments to be performed through laser-access codes that are sold to physicians free of a periodic commitment, but not yet used, are deferred and recognized as a liability until the physician performs the treatment. Unused treatments remain an obligation of the Division because the treatments can only be performed on Division-owned equipment. Once the treatments are performed, this obligation has been satisfied.

The Division defers substantially all revenue from sales of treatment codes ordered by and performed to its customers within the last two weeks of the period in determining the amount of treatments performed by its physician-customers. Management believes this approach closely approximates the actual amount of unused treatments that existed at the end of a period.

Shipping and Handling Costs

Shipping and handling fees billed to customers are reflected as revenues while the related shipping and handling costs are included in selling and marketing expense. To date, shipping and handling costs have not been material.

Product Development Costs

Costs of research, new product development and product redesign are charged to expense as incurred in engineering and product development.

Advertising Costs
Advertising costs are charged to expenses as incurred and are included in selling and marketing expenses in the combined statements of comprehensive income (loss).

Advertising expenses amounted to approximately $1,355 and $881 for the three months ended March 31, 2015 and 2014, respectively.

Income Taxes
For the periods presented, although the Division was included in the consolidated income tax returns of PhotoMedex, the Division's income taxes are computed and reported under the "separate return method". Use of the separate return method may result in differences when the sum of the amounts allocated to standalone tax provisions are compared with amounts presented in combined financial statements. Certain tax attributes, e.g., net operating loss carryforwards, which were reflected in the PhotoMedex consolidated financial statements may or may not exist at the standalone Division level. The Division's financial position and projections have been reviewed given the facts and circumstances as they existed at the historical dates presented. Any resulting net deferred tax assets were evaluated for recoverability and, accordingly, a valuation allowance was provided as it was more likely than not that all or some portion of the deferred tax asset will not be realized.

Adoption of New Accounting Standards
Effective January 1, 2014, the Division adopted Accounting Standard Update 2013-11, *Income Taxes (Topic 740): Presentation of an Unrecognized Tax Benefit When a Net Operating Loss Carryforward, a Similar Tax Loss, or a Tax Credit Carryforward Exists (a consensus of the FASB Emerging Issues Task Force)* ("ASU 2013-11").

The amendments in ASU 2013-11 state that an unrecognized tax benefit, or a portion of an unrecognized tax benefit, should be presented in the financial statements as a reduction to a deferred tax asset for a net operating loss carryforward, a similar tax loss, or a tax credit carryforward, except as follows: To the extent a net operating loss carryforward, a similar tax loss, or a tax credit carryforward is not available at the reporting date under the tax law of the applicable jurisdiction to settle any additional income taxes that would result from the disallowance of a tax position or the tax law of the applicable jurisdiction does not require the entity to use, and the entity does not intend to use, the deferred tax asset for such purpose, the unrecognized tax benefit should be presented in the financial statements as a liability and should not be presented net of deferred tax assets.

ASU 2013-11 applies to all entities that have unrecognized tax benefits when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists at the reporting date. For public companies the amendments in this ASU became effective for fiscal years, and interim periods within those years, beginning after December 15, 2013. The amendments were applied prospectively to all unrecognized tax benefits that existed at the effective date.

The adoption of the standard did not have a material impact on the Company's consolidated results of operations and financial condition.

Effective January 1, 2014, the Division adopted Accounting Standards Update 2013-5, *Foreign Currency Matters (Topic 830) Parent's Accounting for the Cumulative Translation Adjustment upon Derecognition of Certain Subsidiaries or Groups of Assets within a Foreign Entity or of an Investment in a Foreign Entity* ("ASU 2013-5").

ASU 2013-5 clarifies that, when a reporting entity (parent) ceases to have a controlling financial interest in a subsidiary or group of assets that is a business (other than a sale of in-substance real estate or conveyance of oil and gas mineral rights) within a foreign entity, the parent is required to apply the guidance in Subtopic 830-30 to release any related cumulative translation adjustment into net income. Accordingly, the cumulative translation adjustment should be released into net income only if the sale or transfer results in the complete or substantially complete liquidation of the foreign entity in which the subsidiary or group of assets had resided. ASU 2013-5 also clarifies that if the business combination achieved in stages relates to a previously held equity method investment (step-acquisition) that is a foreign entity, the amount of accumulated other comprehensive income that is reclassified and included in the calculation of gain or loss shall include any foreign currency translation adjustment related to that previously held investment.

For public companies, the amendments in this Update became effective prospectively for fiscal years (and interim reporting periods within those years) beginning after December 15, 2013. In accordance with the transition requirements, the amendments were applied prospectively to derecognition events occurring after the effective date. Prior periods are not required be adjusted.

The adoption of the standard did not have a material impact on the Division's combined results of operations and financial condition.

Recently Issued Accounting Standards
In May 2014, The FASB issued Accounting Standard Update 2014-09, *Revenue from Contracts with Customers (Topic 606)* ("ASU 2014-09").

ASU 2014-09 outlines a single comprehensive model to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. ASU 2014-09 also requires entities to disclose sufficient information, both quantitative and qualitative, to enable users of financial statements to understand the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers.

An entity should apply the amendments in this ASU using one of the following two methods: 1. Retrospectively to each prior reporting period presented with a possibility to elect certain practical expedients, or, 2. Retrospectively with the latter transition method, it also should provide certain additional disclosures.

For a public entity, the amendments in ASU 2014-09 are effective for annual reporting periods beginning after December 15, 2016, including interim periods within that reporting period (the first quarter of fiscal year 2017 for the Division). Early application is not permitted. The Division is in the process of assessing the impact, if any, of ASU 2014-09 on its combined financial statements.

In August 2014, the FASB issued Accounting Standards Update 2014-15, *Presentation of Financial Statements—Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* ("ASU 2014-15"). ASU 2014-15 provide guidance on management's responsibility in evaluating whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued (or within one year after the date that the financial statements are available to be issued when applicable). ASU 2014-15 also provide guidance related to the required disclosures as a result of management evaluation.

The amendments in ASU 2014-15 are effective for the annual period ending after December 15, 2016, and for annual periods and interim periods thereafter. Early application is permitted.

Note 2
Relationship with PhotoMedex, Inc.:

The Division businesses were managed and operated in the normal course of business with other affiliates of PhotoMedex, Inc. Accordingly certain shared costs were allocated to the Division and reflected as expenses in the standalone combined financial statements. Management of PhotoMedex considered the allocation methodologies used to be reasonable and appropriate reflections of the historical PhotoMedex expenses attributable to the Division for purposes of the standalone combined financial statements of the Division; however, the expenses reflected in the combined financial statements may not be indicative of the actual expenses that would be have been incurred during the periods presented if the Division had operated as a separate, standalone entity. In addition, the expenses reflected in the combined financial statements may not be indicative of related expenses that will be incurred in the future.

Except for the foreign entities included in the Division, the Division's cash management was part of PhotoMedex's subsidiary; PhotoMedex Technology, Inc. PhotoMedex Technology Inc. has a centralized cash management and financing program for all divisions and/or segments. As cash was disbursed and received by PhotoMedex (through its subsidiary), it was accounted for by the Division through PhotoMedex's net investment in the Division. All short and long-term debt requirements of the Division were financed by PhotoMedex.

(in thousands)

Note 3
Inventories:

	March 31, 2015 (unaudited)	December 31, 2014
Raw materials and work-in-process	$ 2,116	$ 2,116
Finished goods	351	154
Total inventories	$ 2,467	$ 2,270

Work-in-process is immaterial given the typically short manufacturing cycle, and therefore is disclosed in conjunction with raw materials.

Note 4
Property and Equipment:

	March 31, 2015 (unaudited)	December 31, 2014
Lasers-in-service	$ 20,617	$ 18,805
Equipment, computer hardware and software	238	228
Furniture and fixtures	336	331
Leasehold improvements	36	36
	21,227	19,400
Accumulated depreciation and amortization	(7,969)	(7,009)
Total property and equipment, net	$ 13,258	$ 12,391

Related depreciation and amortization expense was $972 and $674 for the three months ended March 31, 2015 and 2014, respectively.

Note 5
Patents and Licensed Technologies, net:

	March 31, 2015 (unaudited)	December 31, 2014
Gross Amount	$ 8,600	$ 8,600
Accumulated amortization	(4,049)	(3,741)
Net Book Value	$ 4,551	$ 4,859

Related amortization expense was $308 for each of the three months ended March 31, 2015 and 2014.

Estimated amortization expense for amortizable patents and licensed technologies assets for the future periods is as follows:

Nine months of 2015	$ 922
2016	1,199
2017	490
2018	490
2019	490
Thereafter	960
Total	$ 4,551

(in thousands)

Note 6
Goodwill and Other Intangible Assets:

Goodwill that arose in connections with the prior period acquisition of businesses that are included in the operations of the Division, in the amount of $1,632, was allocated to the Division. Goodwill reflects the value or premium of the acquisition price in excess of the fair values assigned to specific tangible and intangible assets. Goodwill has an indefinite useful life and therefore is not amortized as an expense, but is reviewed annually for impairment of its fair value to the Division.

The Division has no accumulated impairment losses of goodwill related to the operations as of March 31, 2015.

Set forth below is a detailed listing of other definite-lived intangible assets:

	March 31, 2015 (unaudited)			December 31, 2014		
	Trademarks	Customer Relationships	Total	Trademarks	Customer Relationships	Total
Gross Amount	$ 2,100	$ 1,600	$ 3,700	$ 2,100	$ 1,600	$ 3,700
Accumulated amortization	(691)	(527)	(1,218)	(639)	(487)	(1,126)
Net Book Value	$ 1,409	$ 1,073	$ 2,482	$ 1,461	$ 1,113	$ 2,574

Related amortization expense was $92 for each of the three months ended March 31, 2015 and 2014. Customer Relationships embody the value to the Division of relationships the Division had formed with its customers. Tradename includes the names and various other trademarks associated with the Division products (e.g. “XTRAC” and “VTRAC”).

Estimated amortization expense for the above amortizable intangible assets for future periods is as follows:

Nine months of 2015	$ 278
2016	370
2017	370
2018	370
2019	370
Thereafter	724
Total	$ 2,482

Note 7
Accrued Compensation and related expenses:

	March 31, 2015 (Unaudited)	December 31, 2014
Accrued payroll and related taxes	$ 164	$ 61
Accrued vacation	180	18
Accrued commissions and bonuses	248	329
Total accrued compensation and related expense	$ 592	$ 408

(in thousands)

Note 8
Other Accrued Liabilities:

	March 31, 2015 (Unaudited)	December 31, 2014
Accrued warranty, current, see *Note 1*	$ 168	$ 136
Accrued sales and other taxes	281	257
Other accrued liabilities	52	9
Total other accrued liabilities	$ 501	$ 402

Note 9
Income Taxes:

Income tax expense (benefit) for the Division was determined based on the “separate return method” since the Division was included in the consolidated income tax return of PhotoMedex for the periods presented. Any resulting net deferred tax assets were evaluated for recoverability and, accordingly, a 100% valuation allowance was provided as it was more likely than not that all or some portion of the deferred tax asset will not be realized.

Note 10
Significant Customer Concentration:

For the three months ended March 31, 2015, revenues to the Company’s international master distributor (GlobalMed Technologies) were $1,525, or 20.4%, of total revenues for such period. For the three months ended March 31, 2014, revenues earned from GlobalMed Technologies were $1,511, or 24.9%, of total revenues for such period. At March 31, 2015, the accounts receivable balance from GlobalMed Technologies was $610, or 12.8%, of total net accounts receivable. At March 31, 2014, the accounts receivable balance from GlobalMed Technologies was $485, or 11.2%, of total net accounts receivable.

Note 11
Business Segment and Geographic Data:

The operating segments of the Division, which have been based upon the PhotoMedex’s management structure, products and services offered, markets served and types of customers, are as follows: The Physician Recurring segment derives its revenues from the XTRAC procedures performed by dermatologists and on the repair, maintenance and replacement parts on our various products. The Professional segment generates revenues from the sale of equipment, such as lasers. Management reviews financial information presented on an operating segment basis for the purposes of making certain operating decisions and assessing financial performance.

Unallocated operating expenses include costs that are not specific to a particular segment but are general to the group; included are expenses incurred for administrative and accounting staff, general liability and other insurance, professional fees and other similar corporate expenses. Interest and other financing income (expense), net is also not allocated to the operating segments. Unallocated assets include cash and cash equivalents, prepaid expenses and deposits.

(in thousands)

The following tables reflect results of operations from our business segments for the periods indicated below:

	Three Months ended March 31, 2015 (Unaudited)		
	PHYSICIAN RECURRING	PROFESSIONAL	TOTAL
Revenues	$ 5,828	$ 1,648	$ 7,476
Costs of revenues	2,149	1,115	3,264
Gross profit	3,679	533	4,212
Gross profit %	*63.1%*	*32.3%*	*56.3%*
Allocated operating expenses:			
Engineering and product development	313	104	417
Selling and marketing expenses	4,074	127	4,201
Unallocated operating expenses	-	-	687
	4,387	231	5,305
(Loss) income from operations	(708)	302	(1,093)
Interest and other financing income, net	-	-	5
(Loss) income before taxes	$ (708)	$ 302	$ (1,088)

	Three Months ended March 31, 2014 (Unaudited)		
	PHYSICIAN RECURRING	PROFESSIONAL	TOTAL
Revenues	$ 4,846	$ 1,215	$ 6,061
Costs of revenues	1,936	948	2,884
Gross profit	2,910	267	3,177
Gross profit %	*60.0%*	*22.0%*	*52.4%*
Allocated operating expenses:			
Engineering and product development	253	78	331
Selling and marketing expenses	3,019	116	3,135
Unallocated operating expenses	-	-	1,079
	3,272	194	4,545
Income (loss) from operations	(362)	73	(1,368)
Interest and other financing income, net	-	-	-
(Loss) income before taxes	$ (362)	$ 73	$ (1,368)

(in thousands)

For the three months ended March 31, 2015 and 2014, revenues by geographic area (determined by ship to locations) were as follows (Unaudited):

	Three Months Ended March 31,	
	2015	2014
North America (only United States)	$ 5,547	$ 4,507
Asia Pacific [1]	1,694	1,357
Europe (including Israel)	235	189
South America	-	8
	$ 7,476	$ 6,061

[1] Japan $ 36 $ 511

Note 12
Pending Transaction:

In May 2015, PhotoMedex entered into an asset purchase agreement with Mela Sciences Inc. to purchase the assets of the XTRAC/VTRAC division of PhotoMedex. The transaction is expected to be completed on May 29, 2015.

EXHIBIT 4.1

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

COMMON STOCK PURCHASE WARRANT

MELA SCIENCES, INC.

Warrant No.: ____ Initial Exercise Date: June 22, 2015
Warrant Shares: _____

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to the close of business on the five (5) year anniversary of the Initial Exercise Date (the "Termination Date") but not thereafter, to subscribe for and purchase from MELA Sciences, Inc., a Delaware corporation (the "Company"), up to _____ shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the "Purchase Agreement"), dated June 22, 2015, among the Company and the purchasers signatory thereto.

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed facsimile copy of the Notice of Exercise form annexed hereto and within three (3) Trading Days of the date said Notice of Exercise is received by the Company, the Company shall have received payment of the aggregate Exercise Price of the shares thereby purchased by wire transfer or cashier's check drawn on a United States bank or, if available, pursuant to the cashless exercise procedure specified in Section 2(c) below. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date the final Notice of Exercise is received by the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise form within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be $0.75, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If at any time after the 6 month anniversary of the Initial Exercise Date, there is no effective Registration Statement registering, or no current prospectus available for, the resale of the Warrant Shares by the Holder, then this Warrant may only be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = the VWAP on the Trading Day immediately preceding the date on which Holder elects to exercise this Warrant by means of a "cashless exercise," as set forth in the applicable Notice of Exercise;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised, and the holding period of the Warrants being exercised may be tacked on to the holding period of the Warrant Shares. The Company agrees not to take any position contrary to this Section 2(c).

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants issued pursuant to the Purchase Agreement then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Notwithstanding anything herein to the contrary, on the Termination Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. Warrant Shares purchased hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's prime broker with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery to the address specified by the Holder in the Notice of Exercise by the end of the day on the date that is three (3) Trading Days after the latest of (A) the receipt by the Company of the Notice of Exercise and (B) surrender of this Warrant (if required) (such date, the "Warrant Share Delivery Date"). The Warrant Shares shall be deemed to have been issued, and Holder or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Warrant has been exercised, with payment to the Company of the Exercise Price (or by cashless exercise, if permitted) and all taxes required to be paid by the Holder, if any, pursuant to Section 2(d)(vi) prior to the issuance of such shares, having been paid. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination and shall have no liability for exercise of the Warrant that are not in compliance with the Beneficial Ownership Limitation. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

f) Issuance Restrictions. If the Company has not obtained Shareholder Approval, the Company may not issue upon exercise of this Warrant (1) any shares until six months from the Initial Exercise Date and (2) from and after six months from the Initial Exercise Date (or until such later date if the Company continues to seek shareholder approval at the request of the holders of Warrants), a number of shares of Common Stock, which, when aggregated with any shares of Common Stock issued (i) pursuant to any Debentures issued pursuant to the Purchase Agreement (whether upon conversion or as payment of interest), and (ii) upon prior exercise of this or any other Warrant issued pursuant to the Purchase Agreement, would exceed 1,622,612, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of the Purchase Agreement (such number of shares, the "Issuable Maximum"). The Holder and the holders of the other Debentures and Warrants issued pursuant to the Purchase Agreement shall be entitled to a portion of the Issuable Maximum equal to the quotient obtained by dividing (x) the Holder's original Subscription Amount by (y) the aggregate original Subscription Amount of all holders pursuant to the Purchase Agreement. In addition, the Holder may allocate its pro-rata portion of the Issuable Maximum among Warrants and Debentures held by it in its sole discretion. Such portion shall be adjusted upward ratably in the event a Purchaser (other than the Holder) no longer holds any Warrants or Debentures and the amount of shares issued to such Purchaser pursuant to its Warrants and Debentures was less than such Purchaser's pro-rata share of the Issuable Maximum.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If the Company or any Subsidiary thereof, as applicable, at any time while this Warrant is outstanding, shall sell or grant any option to purchase, or sell or grant any right to reprice, or otherwise dispose of or issue (or announce any offer, sale, grant or any option to purchase or other disposition) any Common Stock or Common Stock Equivalents, at an effective price per share less than the Exercise Price then in effect (such lower price, the "Base Share Price" and such issuances collectively, a "Dilutive Issuance") (it being understood and agreed that if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is less than the Exercise Price, such issuance shall be deemed to have occurred for less than the Exercise Price on such date of the Dilutive Issuance at such effective price), then simultaneously with the consummation of each Dilutive Issuance the Exercise Price shall be reduced and only reduced to equal the Base Share Price and the number of Warrant Shares issuable hereunder shall be increased such that the aggregate Exercise Price payable hereunder, after taking into account the decrease in the Exercise Price, shall be equal to the aggregate Exercise Price prior to such adjustment. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustments shall be made, paid or issued under this Section 3(b) in respect of an Exempt Issuance. The Company shall notify the Holder, in writing, no later than the Trading Day following the issuance or deemed issuance of any Common Stock or Common Stock Equivalents subject to this Section 3(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 3(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Warrant Shares based upon the Base Share Price regardless of whether the Holder accurately refers to the Base Share Price in the Notice of Exercise. If the Company enters into a Variable Rate Transaction, despite the prohibition thereon in the Purchase Agreement, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion or exercise price at which such securities may be converted or exercised. Notwithstanding anything herein to the contrary, this Section 3(b) shall terminate and be of no further force or effect after the later of (i) the one year anniversary of the Initial Exercise Date, and (ii) the earlier of (A) six months after the effective date of the registration statement registering all of the shares of Common Stock required to be registered pursuant to the Registration Rights Agreement (in the event multiple registration statements are required to register all such shares, then this provision shall refer to the last of such registration statements to become effective), and (B) six months after the date that all of the Warrant Shares and shares of Common Stock issued or issuable under the Debentures are freely tradable under Rule 144 without the requirement to be in compliance with the current public information requirements thereunder.

c) Subsequent Rights Offerings. If the Company, at any time while the Warrant is outstanding, shall issue rights, options or warrants to all holders of Common Stock (and not to the Holder) entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the Exercise Price on the record date mentioned below, then the Exercise Price shall be reduced to equal to the Base Share Price. Such adjustment shall be made whenever such rights, options or warrants are issued, and shall become effective immediately after the record date for the determination of stockholders entitled to receive such rights, options or warrants.

d) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, shall distribute to all holders of Common Stock (and not to the Holder) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security other than the Common Stock (which shall be subject to Section 3(b)), then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the VWAP determined as of the record date mentioned above, and of which the numerator shall be such VWAP on such record date less the then per share fair market value at such record date of the portion of such assets or evidence of indebtedness or rights or warrants so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors in good faith. In either case the adjustments shall be described in a statement provided to the Holder of the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

e) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) or Section 2(f) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(e) pursuant to written agreements which are exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly mail to the Holder a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment..

ii. Notice to Allow Exercise by Holder. If, prior to the earlier of (i) the Termination Date and (ii) the date on which this Warrant has been exercised in full, (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be mailed to the Holder at its last address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to mail such notice or any defect therein or in the mailing thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable securities laws and the conditions set forth in Section 4(d) hereof and to the provisions of Sections 4.1 and 5.7 of the Purchase Agreement, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Warrant full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Initial Exercise Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

e) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, comply with the transfer restrictions in the Purchase Agreement.

Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares. The Company covenants that it will use its best efforts to promptly seek shareholder approval for an amendment to its certificate of incorporation to increase the number of authorized shares of Common Stock to permit the exercise of this Warrant in its entirety and, at all times thereafter, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies, notwithstanding the fact that all rights hereunder terminate on the Termination Date. If the Company fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

MELA SCIENCES, INC.

By: _____

Michael R. Stewart
Chief Executive Officer

[Signature Page to Warrant]

NOTICE OF EXERCISE

TO: MELA SCIENCES, INC.

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

_____

(4) Accredited Investor. The undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____
Signature of Authorized Signatory of Investing Entity: _____
Name of Authorized Signatory: _____
Title of Authorized Signatory: _____
Date: _____

ASSIGNMENT FORM

(To assign the foregoing warrant, execute
this form and supply required information.
Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, [____ all of or [_____ shares of the foregoing Warrant and all rights evidenced thereby are hereby assigned to

_____ whose address is

_____.

_____

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

_____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

EXHIBIT 4.2

THIS SECURITY HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

Original Issue Date: **June 22, 2015**

$_____

9% SENIOR SECURED NOTE

THIS 9% SENIOR SECURED NOTE is one of a series of duly authorized and validly issued 9% Senior Secured Notes of MELA Sciences, Inc., a Delaware corporation, (the "Company"), having its principal place of business at 50 South Buckhout Street, Suite 1, Irvington, New York, 10533, designated as its 9% Senior Secured Notes (this note, the "Note", and, collectively with the other notes of such series, the "Notes").

FOR VALUE RECEIVED, the Company promises to pay to _____ or its registered assigns (the "Holder"), or shall have paid pursuant to the terms hereunder, the principal sum of $_____ on the Maturity Date (as defined below) or such earlier date as this Note is required or permitted to be repaid as provided hereunder, and to pay interest to the Holder on the aggregate unconverted and then outstanding principal amount of this Note in accordance with the provisions hereof. This Note is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Note, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement and (b) the following terms shall have the following meanings:

"Bankruptcy Event" means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Company or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts or (g) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Capital Raised" has the meaning set forth in Section 6.

"Change of Control Transaction" means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Company, by contract or otherwise) of in excess of 40% of the voting securities of the Company (other than by means of conversion or exercise of the Debentures and the Securities issued together with the Debentures), (b) the Company merges into or consolidates with any other Person, or any Person merges into or consolidates with the Company and, after giving effect to such transaction, the stockholders of the Company immediately prior to such transaction own less than 40% of the aggregate voting power of the Company or the successor entity of such transaction, (c) the Company sells or transfers all or substantially all of its assets to another Person and the stockholders of the Company immediately prior to such transaction own less than 60% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within an 18 month period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the date hereof), or (e) the execution by the Company of an agreement to which the Company is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

"Conversion Shares" has the meaning ascribed to such term in the Debentures.

"Demand Period" means the period, if any, during which the Maturity Date is on demand.

"Effectiveness Period" has the meaning set forth in the Registration Rights Agreement.

"Event of Default" has the meaning set forth in Section 8(a).

"Excess Capital" has the meaning set forth in Section 6.

"Fundamental Transaction" has the meaning set forth in Section 5(e).

"Interest Payment Date" has the meaning set forth in Section 2(a).

"Late Fees" has the meaning set forth in Section 2(d).

"Maturity Date" means (a) the earlier of (i) 30 days after the date upon which the Company obtains the Shareholder Approval and (ii) November 30, 2015, or (b) if this Note is not repaid in full on or before the date determined in the preceding clause (a), on demand.

"New York Courts" has the meaning set forth in Section 9(d).

"Original Issue Date" means the date of the first issuance of the Notes, regardless of any transfers of any Note and regardless of the number of instruments which may be issued to evidence such Notes.

"Permitted Indebtedness" has the meaning ascribed to such term in the Debentures.

"Permitted Lien" has the meaning ascribed to such term in the Debentures.

"Purchase Agreement" means the Securities Purchase Agreement, dated as of June 22, 2015 among the Company and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date of the Purchase Agreement, among the Company and the original Holders, in the form of Exhibit B attached to the Purchase Agreement.

"Registration Statement" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Underlying Shares by each Holder as provided for in the Registration Rights Agreement.

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange (or any successors to any of the foregoing).

Section 2. Interest.

a) Payment of Interest in Cash or Kind. The Company shall pay interest to the Holder on the aggregate then outstanding principal amount of this Note at the rate of 9% per annum, payable quarterly on January 1, April 1, July 1 and October 1, beginning on the first such date after the Original Issue Date and on the Maturity Date (each such date, an "Interest Payment Date") (if any Interest Payment Date is not a Business Day, then the applicable payment shall be due on the next succeeding Business Day), in cash; provided, that during the Demand Period, if any, such interest rate shall be increased to 12%.

b) [reserved]

c) Interest Calculations. Interest shall be calculated on the basis of a 360-day year, consisting of twelve 30 calendar day periods, and shall accrue daily commencing on the Original Issue Date until payment in full of the outstanding principal, together with all accrued and unpaid interest, liquidated damages and other amounts which may become due hereunder, has been made. Interest hereunder will be paid to the Person in whose name this Note is registered on the records of the Company regarding registration and transfers of this Note (the "Note Register").

d) Late Fee. All overdue accrued and unpaid interest to be paid hereunder shall entail a late fee at an interest rate equal to the lesser of 12% per annum or the maximum rate permitted by applicable law (the "Late Fees") which shall accrue daily from the date such interest is due hereunder through and including the date of actual payment in full.

e) Prepayment. Except as otherwise set forth in this Note, the Company may not prepay any portion of the principal amount of this Note without the prior written consents of the Holders of all of the Notes acting unanimously.

Section 3. Registration of Transfers and Exchanges.

a) Different Denominations. This Note is exchangeable for an equal aggregate principal amount of Notes of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

b) Investment Representations. This Note has been issued subject to certain investment representations of the original Holder set forth in the Purchase Agreement and may be transferred or exchanged only in compliance with the Purchase Agreement and applicable federal and state securities laws and regulations.

c) Reliance on Note Register. Prior to due presentment for transfer to the Company of this Note, the Company and any agent of the Company may treat the Person in whose name this Note is duly registered on the Note Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

Section 4. [reserved]

Section 5. [reserved]

Section 6. Mandatory Prepayment. Notwithstanding anything herein to the contrary, from and after the Original Issue Date until December 31, 2015, at the end of each calendar quarter, the Company shall determine the aggregate amount of cash received by the Company for (i) the exercise of any warrants, (i) issuance of any capital stock or other securities exercisable for or exchangeable into shares of capital stock and (iii) capital raised by any other means (such aggregate amount, the "Capital Raised"). To the extent that the Capital Raised exceeds $4 million (such excess, the "Excess Capital"), the Company shall, within five (5) Trading Days from the end of each such calendar quarter, send the Holder a notice indicating the amount of Capital Raised from the Original Issue Date to date. The Holder hereof shall within five (5) Trading Days, by notice to the Company, elect whether to receive repayment of all or part of the Excess Capital. The Company shall pay to the Holder (and the Holders of other Debt Securities electing to receive repayment of the Excess Capital) the portion of the Excess Capital (less any Excess Capital previously repaid) which equals the amount obtained by multiplying the Excess Capital by a fraction, the numerator of which is the principal amount of this Note and the denominator of which is the principal amount of all Debt Securities which have requested repayment of the Excess Capital.

Section 7. Negative Covenants. As long as any portion of this Note remains outstanding, unless the holders of at least 67% in principal amount of the then outstanding Debt Securities shall have otherwise given prior written consent, the Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including, but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

c) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock or Common Stock Equivalents other than as to (i) the Conversion Shares or Warrant Shares as permitted or required under the Transaction Documents and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Company, provided that such repurchases shall not exceed an aggregate of $75,000 per year for all officers and directors during the term of this Debenture;

e) repay, repurchase or offer to repay, repurchase or otherwise acquire any Indebtedness, other than the Debt Securities if on a pro-rata basis, other than regularly scheduled principal and interest payments as such terms are in effect as of the Original Issue Date or otherwise permitted hereunder, provided that such payments shall not be permitted if, at such time, or after giving effect to such payment, any Event of Default exist or occur;

f) pay cash dividends or distributions on any equity securities of the Company;

g) enter into any transaction with any Affiliate of the Company which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval); or

h) enter into any agreement with respect to any of the foregoing.

Section 8. Events of Default.

a) "Event of Default" means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. any default in the payment of (A) the principal amount of any Note or (B) interest, liquidated damages and other amounts owing to a Holder on any Note, as and when the same shall become due and payable (whether on an Interest Payment Date or the Maturity Date or by acceleration or otherwise) which default, solely in the case of an interest payment or other default under clause (B) above, is not cured within 3 Trading Days;

ii. the Company shall fail to observe or perform any other covenant or agreement contained in the Notes which failure is not cured, if possible to cure, within the earlier to occur of (A) 5 Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) 10 Trading Days after the Company has become or should have become aware of such failure;

iii. an default or event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur under (A) any of the Transaction Documents or (B) any other material agreement, lease, document or instrument to which the Company or any Subsidiary is obligated (and not covered by clause (vi) below) and which have been filed as exhibits to the SEC Reports on or before the Original Issue Date or are filed as exhibits to the SEC Reports after the Original Issue Date and while this Note remains outstanding;

iv. any representation or warranty made in this Note, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

v. the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) shall be subject to a Bankruptcy Event;

vi. the Company or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than $150,000, whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

vii. the Common Stock shall not be eligible for listing or quotation for trading on a Trading Market and shall not be eligible to resume listing or quotation for trading thereon within five Trading Days;

viii. the Company shall be a party to any Change of Control Transaction or Fundamental Transaction or shall agree to sell or dispose of all or in excess of 40% of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction);

ix. [reserved]

x. if, during the Effectiveness Period (as defined in the Registration Rights Agreement), either (a) the effectiveness of the Registration Statement lapses for any reason or (b) the Holder shall not be permitted to resell Registrable Securities (as defined in the Registration Rights Agreement) under the Registration Statement for a period of more than 20 consecutive Trading Days or 30 non-consecutive Trading Days during any 12 month period; provided, however, that if the Company is negotiating a merger, consolidation, acquisition or sale of all or substantially all of its assets or a similar transaction and, in the written opinion of counsel to the Company, the Registration Statement would be required to be amended to include information concerning such pending transaction(s) or the parties thereto which information is not available or may not be publicly disclosed at the time, the Company shall be permitted an additional 10 consecutive Trading Days during any 12 month period pursuant to this Section 7(a)(x);

xi. [reserved]

xii. the electronic transfer by the Company of shares of Common Stock through the Depository Trust Company or another established clearing corporation is no longer available or is subject to a "chill";

xiii. any monetary judgment, writ or similar final process shall be entered or filed against the Company, any subsidiary or any of their respective property or other assets for more than $100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days;

xiv. the Company shall have failed to obtain Shareholder Approval of all items required by Section 4.11(c) of the Purchase Agreement on or prior to November 30, 2015; or

xv. an Event of Default (as defined in the Debentures) shall have occurred and be continuing.

b) Remedies Upon Event of Default. If any Event of Default occurs, the outstanding principal amount of this Note, plus accrued but unpaid interest, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash. Commencing 5 days after the occurrence of any Event of Default that results in the eventual acceleration of this Note, the interest rate on this Note shall accrue at an interest rate equal to the lesser of 12% per annum or the maximum rate permitted under applicable law. Upon the payment in full of the foregoing amounts, the Holder shall promptly surrender this Note to or as directed by the Company. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of this Note until such time, if any, as the Holder receives full payment pursuant to this Section 8(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 9. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Company, at the address set forth above, or such other facsimile number or address as the Company may specify for such purposes by notice to the Holder delivered in accordance with this Section 9(a). Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of the Holder appearing on the books of the Company, or if no such facsimile number or address appears on the books of the Company, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, liquidated damages and accrued interest, as applicable, on this Note at the time, place, and rate, and in the coin or currency, herein prescribed. This Note is a direct debt obligation of the Company. This Note ranks pari passu with all other Debt Securities now or hereafter issued under the terms set forth herein.

c) Lost or Mutilated Debenture. If this Note shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the principal amount of this Note so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Note, and of the ownership hereof, reasonably satisfactory to the Company.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Note or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Note, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Note shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Note. The failure of the Company or the Holder to insist upon strict adherence to any term of this Note on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Note on any other occasion. Any waiver by the Company or the Holder must be in writing.

f) Severability. If any provision of this Note is invalid, illegal or unenforceable, the balance of this Note shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on this Note as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Note, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

g) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note.

h) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

i) Headings. The headings contained herein are for convenience only, do not constitute a part of this Note and shall not be deemed to limit or affect any of the provisions hereof.

j) Secured Obligation. The obligations of the Company under this Note are secured by all assets of the Company pursuant to the Security Agreement, dated as of June 22, 2015 between the Company and the Agent.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed by a duly authorized officer as of the date first above indicated.

MELA SCIENCES, INC.

By: _____
Michael R. Stewart
Chief Executive Officer
Facsimile No. for delivery of Notices: (914) 291-3701

[Signature page to Note]

EXHIBIT 4.3

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON CONVERSION OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

Original Issue Date: **June 22, 2015**
Original Conversion Price (subject to adjustment herein): **$0.75**

$_____

2.25% SENIOR SECURED CONVERTIBLE DEBENTURE
DUE JUNE 22, 2020

THIS 2.25% SENIOR SECURED CONVERTIBLE DEBENTURE is one of a series of duly authorized and validly issued 2.25% Senior Secured Convertible Debentures of MELA Sciences, Inc., a Delaware corporation, (the "Company"), having its principal place of business at 50 South Buckhout Street, Suite 1, Irvington, New York, 10533, designated as its 2.25% Senior Secured Convertible Debenture due June 22, 2020 (this debenture, the "Debenture" and, collectively with the other debentures of such series, the "Debentures").

FOR VALUE RECEIVED, the Company promises to pay to _____ or its registered assigns (the "Holder"), or shall have paid pursuant to the terms hereunder, the principal sum of $_____ on June 22, 2020 (the "Maturity Date") or such earlier date as this Debenture is required or permitted to be repaid as provided hereunder, and to pay interest to the Holder on the aggregate unconverted and then outstanding principal amount of this Debenture in accordance with the provisions hereof. This Debenture is subject to the following additional provisions:

Section 1. Definitions. For the purposes hereof, in addition to the terms defined elsewhere in this Debenture, (a) capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement and (b) the following terms shall have the following meanings:

"Alternate Consideration" has the meaning set forth in Section 5(e).

"Bankruptcy Event" means any of the following events: (a) the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) thereof commences a case or other proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction relating to the Company or any Significant Subsidiary thereof, (b) there is commenced against the Company or any Significant Subsidiary thereof any such case or proceeding that is not dismissed within 60 days after commencement, (c) the Company or any Significant Subsidiary thereof is adjudicated insolvent or bankrupt or any order of relief or other order approving any such case or proceeding is entered, (d) the Company or any Significant Subsidiary thereof suffers any appointment of any custodian or the like for it or any substantial part of its property that is not discharged or stayed within 60 calendar days after such appointment, (e) the Company or any Significant Subsidiary thereof makes a general assignment for the benefit of creditors, (f) the Company or any Significant Subsidiary thereof calls a meeting of its creditors with a view to arranging a composition, adjustment or restructuring of its debts or (g) the Company or any Significant Subsidiary thereof, by any act or failure to act, expressly indicates its consent to, approval of or acquiescence in any of the foregoing or takes any corporate or other action for the purpose of effecting any of the foregoing.

"Base Share Price" has the meaning set forth in Section 5(b).

"Beneficial Ownership Limitation" has the meaning set forth in Section 4(e).

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Buy-In" shall have the meaning set forth in Section 4(c)(v).

"Capital Raised" has the meaning set forth in Section 6.

"Change of Control Transaction" means the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or "group" (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of the Company, by contract or otherwise) of in excess of 40% of the voting securities of the Company (other than by means of conversion or exercise of the Debentures and the Securities issued together with the Debentures), (b) the Company merges into or consolidates with any other Person, or any Person merges into or consolidates with the Company and, after giving effect to such transaction, the stockholders of the Company immediately prior to such transaction own less than 40% of the aggregate voting power of the Company or the successor entity of such transaction, (c) the Company sells or transfers all or substantially all of its assets to another Person and the stockholders of the Company immediately prior to such transaction own less than 60% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within an 18 month period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the date hereof), or (e) the execution by the Company of an agreement to which the Company is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

"Closing Bid Price" means the closing bid price of the Common Stock on the Trading Market, as reported by Bloomberg L.P.

"Conversion" has the meaning ascribed to such term in Section 4.

"Conversion Date" has the meaning set forth in Section 4(a).

"Conversion Price" has the meaning set forth in Section 4(b).

"Conversion Schedule" means the Conversion Schedule in the form of Schedule 1 attached hereto.

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of this Debenture and for the payment of interest in accordance with the terms hereof.

"Debenture Register" has the meaning set forth in Section 2(c).

"Dilutive Issuance" has the meaning set forth in Section 5(b).

"Dilutive Issuance Notice" has the meaning set forth in Section 5(b).

"Effectiveness Period" has the meaning set forth in the Registration Rights Agreement.

"Equity Conditions" means, during the period in question, (a) the Company shall have duly honored all conversions and redemptions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the Holder, if any, (b) the Company shall have paid all liquidated damages and other amounts owing to the Holder in respect of this Debenture, (c)(i) there is an effective Registration Statement pursuant to which the Holder is permitted to utilize the prospectus thereunder to resell all of the shares of Common Stock issuable pursuant to the Transaction Documents (and the Company believes, in good faith, that such effectiveness will continue uninterrupted for the foreseeable future) or (ii) all of the Conversion Shares issuable pursuant to the Transaction Documents (and shares issuable in lieu of cash payments of interest) may be resold pursuant to Rule 144 without volume or manner-of-sale restrictions or current public information requirements as determined by the counsel to the Company as set forth in a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the Holder, (d) the Common Stock is trading on a Trading Market and all of the shares issuable pursuant to the Transaction Documents are listed or quoted for trading on such Trading Market (and the Company believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (e) there is a sufficient number of authorized but unissued and otherwise unreserved shares of Common Stock for the issuance of all of the shares then issuable pursuant to the Transaction Documents, (f) there is no existing Event of Default and no existing event which, with the passage of time or the giving of notice, would constitute an Event of Default, (g) the issuance of the shares in question to the Holder would not violate the limitations set forth in Section 4(a) or Section 4(d) herein, (h) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (i) the applicable Holder is not in possession of any information provided by the Company that constitutes, or may constitute, material non-public information and (j) for each Trading Day in a period of 20 consecutive Trading Days prior to the applicable date in question, the daily trading volume for the Common Stock on the principal Trading Market exceeds $75,000 per Trading Day.

"Event of Default" has the meaning set forth in Section 8(a).

"Excess Capital" has the meaning set forth in Section 6.

"Fundamental Transaction" has the meaning set forth in Section 5(e).

"Interest Conversion Rate" means 85% of the average of the VWAP's for the ten Trading Days immediately preceding the applicable Interest Payment Date.

"Interest Conversion Shares" has the meaning set forth in Section 2(a).

"Interest Notice Period" has the meaning set forth in Section 2(a).

"Interest Payment Date" has the meaning set forth in Section 2(a).

"Interest Share Amount" has the meaning set forth in Section 2(a).

"Late Fees" has the meaning set forth in Section 2(d).

"Mandatory Default Amount" means the sum of (a) the greater of (i) the outstanding principal amount of this Debenture, plus all accrued and unpaid interest hereon, divided by the Conversion Price on the date the Mandatory Default Amount is either (A) demanded (if demand or notice is required to create an Event of Default) or otherwise due or (B) paid in full, whichever has a lower Conversion Price, multiplied by the VWAP on the date the Mandatory Default Amount is either (x) demanded or otherwise due or (y) paid in full, whichever has a higher VWAP, or (ii) 100% of the outstanding principal amount of this Debenture, plus 100% of accrued and unpaid interest hereon, and (b) all other amounts, costs, expenses and liquidated damages due in respect of this Debenture.

"New Issue Price" has the meaning set forth in Section 5(c).

"New York Courts" has the meaning set forth in Section 9(d).

"Notice of Conversion" has the meaning set forth in Section 4(a).

"Original Issue Date" means the date of the first issuance of the Debentures, regardless of any transfers of any Debenture and regardless of the number of instruments which may be issued to evidence such Debentures.

"Permitted Indebtedness" means (a) the indebtedness evidenced by the Debt Securities, (b) the Indebtedness existing on the Original Issue Date and set forth on Schedule 3.1(aa) attached to the Purchase Agreement, (c) lease obligations and purchase money indebtedness of up to $150,000, in the aggregate per year, incurred in connection with the acquisition of capital assets and lease obligations with respect to newly acquired or leased assets, and (d) other indebtedness incurred in the ordinary course of business up to $250,000 at any time outstanding.

"Permitted Lien" means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Company's business, such as carriers', warehousemen's and mechanics' Liens, statutory landlords' Liens, and other similar Liens arising in the ordinary course of the Company's business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Lien, (c) Liens incurred in connection with Permitted Indebtedness under clauses (a) and (b) thereunder, and (d) Liens incurred in connection with Permitted Indebtedness under clause (c) thereunder, provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets so acquired or leased.

"Purchase Agreement" means the Securities Purchase Agreement, dated as of June 22, 2015 among the Company and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date of the Purchase Agreement, among the Company and the original Holders, in the form of Exhibit B attached to the Purchase Agreement.

"Registration Statement" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Underlying Shares by each Holder as provided for in the Registration Rights Agreement.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Share Delivery Date" has the meaning set forth in Section 4(c)(ii).

"Successor Entity" has the meaning set forth in Section 5(e).

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange (or any successors to any of the foregoing).

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTC Bulletin Board is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the "Pink Sheets" published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Section 2. Interest.

a) Payment of Interest in Cash or Kind. The Company shall pay interest to the Holder on the aggregate unconverted and then outstanding principal amount of this Debenture at the rate of 2.25% per annum, payable quarterly on January 1, April 1, July 1 and October 1, beginning on the first such date after the Original Issue Date, on each Conversion Date (as to that principal amount then being converted) and on the Maturity Date (each such date, an "Interest Payment Date") (if any Interest Payment Date is not a Business Day, then the applicable payment shall be due on the next succeeding Business Day), in cash or, at the Company's option, in duly authorized, validly issued, fully paid and non-assessable shares of Common Stock at the Interest Conversion Rate (the dollar amount to be paid in shares, the "Interest Share Amount") or a combination thereof; provided, however, that payment in shares of Common Stock may only occur if (i) all of the Equity Conditions have been met (unless waived by the Holder in writing) during the 20 Trading Days immediately prior to the applicable Interest Payment Date (the "Interest Notice Period") and through and including the date such shares of Common Stock are actually issued to the Holder, (ii) the Company shall have given the Holder notice in accordance with the notice requirements set forth below, (iii) the then applicable Conversion Price is less than the Interest Conversion Rate and (iv) as to such Interest Payment Date, prior to such Interest Notice Period (but not more than five (5) Trading Days prior to the commencement of such Interest Notice Period), the Company shall have delivered to the Holder's account with The Depository Trust Company a number of shares of Common Stock to be applied against such Interest Share Amount equal to the quotient of (x) the applicable Interest Share Amount divided by (y) the lesser of the (i) then Conversion Price and (ii) the Interest Conversion Rate assuming for such purposes that the Interest Payment Date is the Trading Day immediately prior to the commencement of the Interest Notice Period (the "Interest Conversion Shares").

b) Company's Election to Pay Interest in Cash or Kind. Subject to the terms and conditions herein, the decision whether to pay interest hereunder in cash, shares of Common Stock or a combination thereof shall be at the sole discretion of the Company. Prior to the commencement of any Interest Notice Period, the Company shall deliver to the Holder a written notice of its election to pay interest hereunder on the applicable Interest Payment Date either in cash, shares of Common Stock or a combination thereof and the Interest Share Amount as to the applicable Interest Payment Date, provided that the Company may indicate in such notice that the election contained in such notice shall apply to future Interest Payment Dates until revised by a subsequent notice. During any Interest Notice Period, the Company's election (whether specific to an Interest Payment Date or continuous) shall be irrevocable as to such Interest Payment Date. Subject to the aforementioned conditions, failure to timely deliver such written notice to the Holder shall be deemed an election by the Company to pay the interest on such Interest Payment Date in cash. At any time the Company delivers a notice to the Holder of its election to pay the interest in shares of Common Stock, the Company shall timely file a prospectus supplement pursuant to Rule 424 disclosing such election. The aggregate number of shares of Common Stock otherwise issuable to the Holder on an Interest Payment Date shall be reduced by the number of Interest Conversion Shares previously issued to the Holder in connection with such Interest Payment Date.

c) Interest Calculations. Interest shall be calculated on the basis of a 360-day year, consisting of twelve 30 calendar day periods, and shall accrue daily commencing on the Original Issue Date until payment in full of the outstanding principal, together with all accrued and unpaid interest, liquidated damages and other amounts which may become due hereunder, has been made. Payment of interest in shares of Common Stock (other than the Interest Conversion Shares issued prior to an Interest Notice Period) shall otherwise occur pursuant to Section 4(c)(ii) herein and, solely for purposes of the payment of interest in shares, the Interest Payment Date shall be deemed the Conversion Date. Interest shall cease to accrue with respect to any principal amount converted, provided that, the Company actually delivers the Conversion Shares within the time period required by Section 4(c)(ii) herein. Interest hereunder will be paid to the Person in whose name this Debenture is registered on the records of the Company regarding registration and transfers of this Debenture (the "Debenture Register"). Except as otherwise provided herein, if at any time the Company pays interest partially in cash and partially in shares of Common Stock to the holders of the Debentures, then such payment of cash shall be distributed ratably among the holders of the then-outstanding Debentures based on their (or their predecessor's) initial purchases of Debentures pursuant to the Purchase Agreement.

d) Late Fee. All overdue accrued and unpaid interest to be paid hereunder shall entail a late fee at an interest rate equal to the lesser of 12% per annum or the maximum rate permitted by applicable law (the "Late Fees") which shall accrue daily from the date such interest is due hereunder through and including the date of actual payment in full. Notwithstanding anything to the contrary contained herein, if, on any Interest Payment Date the Company has elected to pay accrued interest in the form of Common Stock but the Company is not permitted to pay accrued interest in Common Stock because it fails to satisfy the conditions for payment in Common Stock set forth in Section 2(a) herein, then, at the option of the Holder, the Company, in lieu of delivering either shares of Common Stock pursuant to this Section 2 or paying the regularly scheduled interest payment in cash, shall deliver, within three (3) Trading Days of each applicable Interest Payment Date, an amount in cash equal to the product of (x) the number of shares of Common Stock otherwise deliverable to the Holder in connection with the payment of interest due on such Interest Payment Date multiplied by (y) the highest VWAP during the period commencing on the Interest Payment Date and ending on the Trading Day prior to the date such payment is actually made. If any Interest Conversion Shares are issued to the Holder in connection with an Interest Payment Date and are not applied against an Interest Share Amount, then the Holder shall promptly return such excess shares to the Company.

e) Prepayment. Except as otherwise set forth in this Debenture, the Company may not prepay any portion of the principal amount of this Debenture without the prior written consent of the Holder.

Section 3. Registration of Transfers and Exchanges.

a) Different Denominations. This Debenture is exchangeable for an equal aggregate principal amount of Debentures of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange.

b) Investment Representations. This Debenture has been issued subject to certain investment representations of the original Holder set forth in the Purchase Agreement and may be transferred or exchanged only in compliance with the Purchase Agreement and applicable federal and state securities laws and regulations.

c) Reliance on Debenture Register. Prior to due presentment for transfer to the Company of this Debenture, the Company and any agent of the Company may treat the Person in whose name this Debenture is duly registered on the Debenture Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Debenture is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

Section 4. Conversion.

a) Voluntary Conversion. At any time after the both (i) the Original Issue Date and (ii) the earlier to occur of (1) the Company has received shareholder approval as required by its Principal Market for the issuance of shares of Common Stock upon conversion of this Debenture and (2) six months after the Original Issue Date (or until such later date if the Company continues to seek shareholder approval at the request of the Holders), and until this Debenture is no longer outstanding, this Debenture shall be convertible, in whole or in part, into shares of Common Stock at the option of the Holder, at any time and from time to time (subject to the conversion limitations set forth in this Section 4(a) and in Section 4(d) hereof). Notwithstanding the foregoing, if the Company has not obtained Shareholder Approval, the Company may not issue a number of shares of Common Stock, which, when aggregated with any shares of Common Stock issued (i) pursuant to any Debentures issued pursuant to the Purchase Agreement (whether upon conversion or as payment of interest), and (ii) upon prior exercise of any Warrant issued pursuant to the Purchase Agreement, would exceed 1,622,612, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of the Purchase Agreement (such number of shares, the "Issuable Maximum"). The Holder and the holders of the other Debentures and Warrants issued pursuant to the Purchase Agreement shall be entitled to a portion of the Issuable Maximum equal to the quotient obtained by dividing (x) the Holder's original Subscription Amount by (y) the aggregate original Subscription Amount of all holders pursuant to the Purchase Agreement. In addition, the Holder may allocate its pro-rata portion of the Issuable Maximum among Warrants and Debentures held by it in its sole discretion. Such portion shall be adjusted upward ratably in the event a Purchaser (other than the Holder) no longer holds any Warrants or Debentures and the amount of shares issued to such Purchaser pursuant to its Warrants and Debentures was less than such Purchaser's pro-rata share of the Issuable Maximum. The Holder shall effect conversions by delivering to the Company a Notice of Conversion, the form of which is attached hereto as Annex A (each, a "Notice of Conversion"), specifying therein the principal amount of this Debenture to be converted and the date on which such conversion shall be effected (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions hereunder, the Holder shall not be required to physically surrender this Debenture to the Company unless the entire principal amount of this Debenture, plus all accrued and unpaid interest thereon, has been so converted. Conversions hereunder shall have the effect of lowering the outstanding principal amount of this Debenture in an amount equal to the applicable conversion. The Holder and the Company shall maintain records showing the principal amount(s) converted and the date of such conversion(s). The Company may deliver an objection to any Notice of Conversion within one (1) Business Day of delivery of such Notice of Conversion. In the event of any dispute or discrepancy, the records of the Holder shall be controlling and determinative in the absence of manifest error. **The Holder, and any assignee by acceptance of this Debenture, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of this Debenture, the unpaid and unconverted principal amount of this Debenture may be less than the amount stated on the face hereof.**

b) Conversion Price. The conversion price in effect on any Conversion Date shall be equal to $0.75, subject to adjustment herein (the "Conversion Price").

c) Mechanics of Conversion.

i. Conversion Shares Issuable Upon Conversion of Principal Amount. The number of Conversion Shares issuable upon a conversion hereunder shall be determined by the quotient obtained by dividing (x) the outstanding principal amount of this Debenture to be converted by (y) the Conversion Price.

ii. Delivery of Certificate Upon Conversion. Not later than three (3) Trading Days after each Conversion Date (the "Share Delivery Date"), the Company shall deliver, or cause to be delivered, to the Holder (A) a certificate or certificates representing the Conversion Shares which, on or after the earlier of (i) the six month anniversary of the Original Issue Date or (ii) the Effective Date, shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Purchase Agreement) representing the number of Conversion Shares being acquired upon the conversion of this Debenture (including, if the Company has given continuous notice pursuant to Section 2(b) for payment of interest in shares of Common Stock at least 20 Trading Days prior to the date on which the Notice of Conversion is delivered to the Company, shares of Common Stock representing the payment of accrued interest otherwise determined pursuant to Section 2(a) but assuming that the Interest Notice Period is the 20 Trading Days period immediately prior to the date on which the Notice of Conversion is delivered to the Company and excluding for such issuance the condition that the Company deliver Interest Conversion Shares as to such interest payment prior to the commencement of the Interest Notice Period) and (B) a bank check in the amount of accrued and unpaid interest (if the Company has elected or is required to pay accrued interest in cash). On or after the earlier of (i) the six month anniversary of the Original Issue Date or (ii) the Effective Date, the Company shall deliver any certificate or certificates required to be delivered by the Company under this Section 4(c) electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

iii. Failure to Deliver Certificates. If, in the case of any Notice of Conversion, such certificate or certificates are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Company at any time on or before its receipt of such certificate or certificates, to rescind such Conversion, in which event the Company shall promptly return to the Holder any original Debenture delivered to the Company and the Holder shall promptly return to the Company the Common Stock certificates issued to such Holder pursuant to the rescinded Conversion Notice.

iv. Obligation Absolute; Partial Liquidated Damages. The Company's obligations to issue and deliver the Conversion Shares upon conversion of this Debenture in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action the Company may have against the Holder. In the event the Holder of this Debenture shall elect to convert any or all of the outstanding principal amount hereof, the Company may not refuse conversion based on any claim that the Holder or anyone associated or affiliated with the Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and or enjoining conversion of all or part of this Debenture shall have been sought and obtained. In the absence of such injunction, the Company shall issue Conversion Shares or, if applicable, cash, upon a properly noticed conversion. If the Company fails for any reason to deliver to the Holder such certificate or certificates pursuant to Section 4(c)(ii) by the Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of principal amount being converted, $10 per Trading Day (increasing to $20 per Trading Day on the third (3rd) Trading Day after such liquidated damages begin to accrue and increasing to $40 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after such Share Delivery Date until such certificates are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages or declare an Event of Default pursuant to Section 8 hereof for the Company's failure to deliver Conversion Shares within the period specified herein and the Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

v. Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. In addition to any other rights available to the Holder, if the Company fails for any reason to deliver to the Holder such certificate or certificates by the Share Delivery Date pursuant to Section 4(c)(ii), and if after such Share Delivery Date the Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Conversion Shares which the Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Company shall (A) pay in cash to the Holder (in addition to any other remedies available to or elected by the Holder) the amount, if any, by which (x) the Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that the Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the Holder, either reissue (if surrendered) this Debenture in a principal amount equal to the principal amount of the attempted conversion (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 4(c)(ii). For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of this Debenture with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon conversion of this Debenture as required pursuant to the terms hereof.

vi. Reservation of Shares Issuable Upon Conversion. The Company covenants that it will use its best efforts to promptly seek shareholder approval for an amendment to its certificate of incorporation to increase the number of authorized shares of Common Stock to permit the conversion of this Debenture in its entirety and, at all times thereafter, reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of this Debenture and payment of interest on this Debenture, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Debentures), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 5) upon the conversion of the then outstanding principal amount of this Debenture and payment of interest hereunder. The Company covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable and, if the Registration Statement is then effective under the Securities Act, shall be registered for public resale in accordance with such Registration Statement (subject to such Holder's compliance with its obligations under the Registration Rights Agreement).

vii. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of this Debenture or payment of interest on this Debenture. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Company shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

viii. Transfer Taxes and Expenses. Each issuance of certificates for shares of Common Stock on conversion of this Debenture or payment of interest under this Debenture shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that, the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of this Debenture so converted and the Company shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

d) Holder's Conversion Limitations. The Company shall not effect any conversion of this Debenture, and a Holder shall not have the right to convert any portion of this Debenture, to the extent that after giving effect to the conversion set forth on the applicable Notice of Conversion, the Holder (together with the Holder's Affiliates, and any Persons acting as a group together with the Holder or any of the Holder's Affiliates) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates shall include the number of shares of Common Stock issuable upon conversion of this Debenture with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted principal amount of this Debenture beneficially owned by the Holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, any other Debentures, preferred stock or the Warrants) beneficially owned by the Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 4(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 4(d) applies, the determination of whether this Debenture is convertible (in relation to other securities owned by the Holder together with any Affiliates) and of which principal amount of this Debenture is convertible shall be in the sole discretion of the Holder, and the submission of a Notice of Conversion shall be deemed to be the Holder's determination of whether this Debenture may be converted (in relation to other securities owned by the Holder together with any Affiliates) and which principal amount of this Debenture is convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, the Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 4(d), in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company, or (iii) a more recent written notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Debenture, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of the Debentures held by the applicable Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of the Debenture.

Section 5. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Company, at any time while this Debenture is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon conversion of, or payment of interest on, the Debentures), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If the Company or any Subsidiary thereof, as applicable, at any time while this Debenture is outstanding, shall sell or grant any option to purchase, or sell or grant any right to reprice, or otherwise dispose of or issue (or announce any offer, sale, grant or any option to purchase or other disposition) any Common Stock or Common Stock Equivalents, at an effective price per share less than the Conversion Price then in effect (such lower price, the "Base Share Price" and such issuances collectively, a "Dilutive Issuance") (it being understood and agreed that if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is less than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance at such effective price), then simultaneously with the consummation of each Dilutive Issuance the Conversion Price shall be reduced to equal the Base Share Price. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustments shall be made, paid or issued under this Section 5(b) in respect of an Exempt Issuance. The Company shall notify the Holder, in writing, no later than the Trading Day following the issuance or deemed issuance of any Common Stock or Common Stock Equivalents subject to this Section 5(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 5(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Share Price regardless of whether the Holder accurately refers to the Base Share Price in the Notice of Conversion. If the Company enters into a Variable Rate Transaction, despite the prohibition thereon in the Purchase Agreement, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion or exercise price at which such securities may be converted or exercised. Notwithstanding anything herein to the contrary, this Section 5(b) shall terminate and be of no further force or effect after the later of (i) the one year anniversary of the Original Issue Date, and (ii) the earlier of (A) six months after the effective date of the registration statement registering all of the shares of Common Stock required to be registered pursuant to the Registration Rights Agreement (in the event multiple registration statements are required to register all such shares, then this provision shall refer to the last of such registration statements to become effective), and (B) six months after the date that all of the Warrant Shares and shares of Common Stock issued or issuable under this Debentures are freely tradable under Rule 144 without the requirement to be in compliance with the current public information requirements thereunder.

c) Subsequent Rights Offerings. If the Company, at any time while the Debenture is outstanding, shall issue rights, options or warrants to all holders of Common Stock entitling them to subscribe for or purchase shares of Common Stock at a price per share (a "New Issue Price") that is lower than the Conversion Price on the record date referenced below, then the Conversion Price shall be reduced to equal such New Issue Price. Such adjustment shall be made whenever such rights, options or warrants are issued, and shall become effective immediately after the record date for the determination of stockholders entitled to receive such rights, options or warrants.

d) Pro Rata Distributions. If the Company, at any time while this Debenture is outstanding, shall distribute to all holders of Common Stock (and not to the Holder) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security, then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the VWAP determined as of the record date mentioned above, and of which the numerator shall be such VWAP on such record date less the then per share fair market value at such record date of the portion of such assets or evidence of indebtedness or rights or warrants so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors in good faith. In either case the adjustments shall be described in a statement provided to the Holder of the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

e) Fundamental Transaction. If, at any time while this Debenture is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Debenture, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 4(d) on the conversion of this Debenture), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Debenture is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 4(d) on the conversion of this Debenture) is convertible. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one (1) share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Debenture following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Debenture and the other Transaction Documents (as defined in the Purchase Agreement) in accordance with the provisions of this Section 5(e) pursuant to written agreements and shall, at the option of the holder of this Debenture, deliver to the Holder in exchange for this Debenture a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Debenture which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Debenture (without regard to any limitations on the conversion of this Debenture) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Debenture immediately prior to the consummation of such Fundamental Transaction). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Debenture and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Debenture and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 5 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 5, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Company) issued and outstanding.

g) Notice to the Holder.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 5, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of this Debenture, and shall cause to be delivered to the Holder at its last address as it shall appear upon the Debenture Register, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert this Debenture during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 6. Mandatory Prepayment. Notwithstanding anything herein to the contrary, from and after the Original Issue Date until December 31, 2015, at the end of each calendar quarter, the Company shall determine the aggregate amount of cash received by the Company for (i) the exercise of any warrants, (i) issuance of any capital stock or other securities exercisable for or exchangeable into shares of capital stock and (iii) capital raised by any other means (such aggregate amount, the "Capital Raised"). To the extent that the Capital Raised exceeds $4 million (such excess, the "Excess Capital"), the Company shall, within five (5) Trading Days from the end of each such calendar quarter, send the Holder a notice indicating the amount of Capital Raised from the Original Issue Date to date. The Holder hereof shall within five (5) Trading Days, by notice to the Company, elect whether to receive repayment of all or part of the Excess Capital. The Company shall pay to the Holder (and the Holders of other Debt Securities electing to receive repayment of the Excess Capital) the portion of the Excess Capital (less any Excess Capital previously repaid) which equals the amount obtained by multiplying the Excess Capital by a fraction, the numerator of which is the principal amount of this Debenture and the denominator of which is the principal amount of all Debt Securities which have requested repayment of the Excess Capital.

Section 7. Negative Covenants. As long as any portion of this Debenture remains outstanding, unless the holders of at least 67% in principal amount of the then outstanding Debt Securities shall have otherwise given prior written consent, the Company shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

a) other than Permitted Indebtedness, enter into, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind, including, but not limited to, a guarantee, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

b) other than Permitted Liens, enter into, create, incur, assume or suffer to exist any Liens of any kind, on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom;

c) amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a de minimis number of shares of its Common Stock or Common Stock Equivalents other than as to (i) the Conversion Shares or Warrant Shares as permitted or required under the Transaction Documents and (ii) repurchases of Common Stock or Common Stock Equivalents of departing officers and directors of the Company, provided that such repurchases shall not exceed an aggregate of $75,000 per year for all officers and directors during the term of this Debenture;

e) repay, repurchase or offer to repay, repurchase or otherwise acquire any Indebtedness, other than the Debt Securities if on a pro-rata basis, other than regularly scheduled principal and interest payments as such terms are in effect as of the Original Issue Date or otherwise permitted hereunder, provided that such payments shall not be permitted if, at such time, or after giving effect to such payment, any Event of Default exist or occur;

f) pay cash dividends or distributions on any equity securities of the Company;

g) enter into any transaction with any Affiliate of the Company which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval); or

h) enter into any agreement with respect to any of the foregoing.

Section 8. Events of Default.

a) "Event of Default" means, wherever used herein, any of the following events (whatever the reason for such event and whether such event shall be voluntary or involuntary or effected by operation of law or pursuant to any judgment, decree or order of any court, or any order, rule or regulation of any administrative or governmental body):

i. any default in the payment of (A) the principal amount of any Debenture or (B) interest, liquidated damages and other amounts owing to a Holder on any Debenture, as and when the same shall become due and payable (whether on a Conversion Date, an Interest Payment Date or the Maturity Date or by acceleration or otherwise) which default, solely in the case of an interest payment or other default under clause (B) above, is not cured within 3 Trading Days;

ii. the Company shall fail to observe or perform any other covenant or agreement contained in the Debentures (other than a breach by the Company of its obligations to deliver shares of Common Stock to the Holder upon conversion, which breach is addressed in clause (xi) below) which failure is not cured, if possible to cure, within the earlier to occur of (A) 5 Trading Days after notice of such failure sent by the Holder or by any other Holder to the Company and (B) 10 Trading Days after the Company has become or should have become aware of such failure;

iii. an default or event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur under (A) any of the Transaction Documents or (B) any other material agreement, lease, document or instrument to which the Company or any Subsidiary is obligated (and not covered by clause (vi) below) and which have been filed as exhibits to the SEC Reports on or before the Original Issue Date or are filed as exhibits to the SEC Reports after the Original Issue Date and while this Debenture remains outstanding;

iv. any representation or warranty made in this Debenture, any other Transaction Documents, any written statement pursuant hereto or thereto or any other report, financial statement or certificate made or delivered to the Holder or any other Holder shall be untrue or incorrect in any material respect as of the date when made or deemed made;

v. the Company or any Significant Subsidiary (as such term is defined in Rule 1-02(w) of Regulation S-X) shall be subject to a Bankruptcy Event;

vi. the Company or any Subsidiary shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than $150,000, whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

vii. the Common Stock shall not be eligible for listing or quotation for trading on a Trading Market and shall not be eligible to resume listing or quotation for trading thereon within five Trading Days;

viii. the Company shall be a party to any Change of Control Transaction or Fundamental Transaction or shall agree to sell or dispose of all or in excess of 40% of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction);

ix. the Initial Registration Statement (as defined in the Registration Rights Agreement) shall not have been declared effective by the Commission on or prior to the 120th calendar day after the Closing Date or the Company does not meet the current public information requirements under Rule 144 in respect of the Registrable Securities (as defined under the Registration Rights Agreement);

x. if, during the Effectiveness Period (as defined in the Registration Rights Agreement), either (a) the effectiveness of the Registration Statement lapses for any reason or (b) the Holder shall not be permitted to resell Registrable Securities (as defined in the Registration Rights Agreement) under the Registration Statement for a period of more than 20 consecutive Trading Days or 30 non-consecutive Trading Days during any 12 month period; provided, however, that if the Company is negotiating a merger, consolidation, acquisition or sale of all or substantially all of its assets or a similar transaction and, in the written opinion of counsel to the Company, the Registration Statement would be required to be amended to include information concerning such pending transaction(s) or the parties thereto which information is not available or may not be publicly disclosed at the time, the Company shall be permitted an additional 10 consecutive Trading Days during any 12 month period pursuant to this Section 7(a)(x);

xi. the Company shall fail for any reason to deliver certificates to a Holder prior to the fifth Trading Day after a Conversion Date pursuant to Section 4(e) or any Forced Conversion Date pursuant to Section 6 or the Company shall provide at any time notice to the Holder, including by way of public announcement, of the Company's intention to not honor requests for conversions of any Debentures in accordance with the terms hereof;

xii. the electronic transfer by the Company of shares of Common Stock through the Depository Trust Company or another established clearing corporation is no longer available or is subject to a "chill";

xiii. any monetary judgment, writ or similar final process shall be entered or filed against the Company, any subsidiary or any of their respective property or other assets for more than $100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 45 calendar days;

xiv. the Company shall have failed to obtain Shareholder Approval of all items required by Section 4.11(c) of the Purchase Agreement on or prior to November 30, 2015; or

xv. an Event of Default (as defined in the Notes (as defined in the Purchase Agreement)) shall have occurred and be continuing.

b) Remedies Upon Event of Default. If any Event of Default occurs, the outstanding principal amount of this Debenture, plus accrued but unpaid interest, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash at the Mandatory Default Amount. Commencing 5 days after the occurrence of any Event of Default that results in the eventual acceleration of this Debenture, the interest rate on this Debenture shall accrue at an interest rate equal to the lesser of 12% per annum or the maximum rate permitted under applicable law. Upon the payment in full of the Mandatory Default Amount, the Holder shall promptly surrender this Debenture to or as directed by the Company. In connection with such acceleration described herein, the Holder need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Debenture until such time, if any, as the Holder receives full payment pursuant to this Section 8(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 9. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holder hereunder, including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Company, at the address set forth above, or such other facsimile number or address as the Company may specify for such purposes by notice to the Holder delivered in accordance with this Section 9(a). Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of the Holder appearing on the books of the Company, or if no such facsimile number or address appears on the books of the Company, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Debenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, liquidated damages and accrued interest, as applicable, on this Debenture at the time, place, and rate, and in the coin or currency, herein prescribed. This Debenture is a direct debt obligation of the Company. This Debenture ranks pari passu with all other Debt Securities now or hereafter issued under the terms set forth herein.

c) Lost or Mutilated Debenture. If this Debenture shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Debenture, or in lieu of or in substitution for a lost, stolen or destroyed Debenture, a new Debenture for the principal amount of this Debenture so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Debenture, and of the ownership hereof, reasonably satisfactory to the Company.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Debenture shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Debenture and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Debenture or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Debenture, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Company or the Holder of a breach of any provision of this Debenture shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Debenture. The failure of the Company or the Holder to insist upon strict adherence to any term of this Debenture on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Debenture on any other occasion. Any waiver by the Company or the Holder must be in writing.

f) Severability. If any provision of this Debenture is invalid, illegal or unenforceable, the balance of this Debenture shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on this Debenture as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Debenture, and the Company (to the extent it may lawfully do so) hereby expressly waives all benefits or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such as though no such law has been enacted.

g) Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Debenture shall be cumulative and in addition to all other remedies available under this Debenture and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Debenture. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Debenture.

h) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

i) Headings. The headings contained herein are for convenience only, do not constitute a part of this Debenture and shall not be deemed to limit or affect any of the provisions hereof.

j) Secured Obligation. The obligations of the Company under this Debenture are secured by all assets of the Company pursuant to the Security Agreement, dated as of June 22, 2015 between the Company and the Agent.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Debenture to be duly executed by a duly authorized officer as of the date first above indicated.

MELA SCIENCES, INC.

By: _____

Michael R. Stewart
Chief Executive Officer
Facsimile No. for delivery of Notices: (914) 291-3701

[Signature Page to Debenture]

ANNEX A

NOTICE OF CONVERSION

The undersigned hereby elects to convert principal under the 2.25% Senior Secured Convertible Debenture due June 22, 2020 of MELA Sciences, Inc., a Delaware corporation (the "Company"), into shares of Common Stock (the "Common Stock"), of the Company according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by the Company in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

By the delivery of this Notice of Conversion the undersigned represents and warrants to the Company that its ownership of common stock of the Company does not exceed the amounts specified under Section 4 of this Debenture, as determined in accordance with Section 13(d) of the Exchange Act.

The undersigned agrees to comply with the prospectus delivery requirements under the applicable securities laws in connection with any transfer of the aforesaid shares of Common Stock.

Conversion calculations:

Date to Effect Conversion:

Principal Amount of Debenture to be Converted:

Payment of Interest in Common Stock __ yes __ no
If yes, $_____ of Interest Accrued on Account of Conversion at Issue.

Number of shares of Common Stock to be issued:

Signature:

Name:

Address for Delivery of Common Stock Certificates:

Or

DWAC Instructions:

Broker No:_____
Account No: _____

Schedule 1

CONVERSION SCHEDULE

The 2.25% Senior Secured Convertible Debentures due on June 22, 2020 in the aggregate principal amount of $_____ are issued by MELA Sciences, Inc., a Delaware corporation. This Conversion Schedule reflects conversions made under Section 4 of the above referenced Debenture.

Dated:

Date of Conversion (or for first entry, Original Issue Date)	Amount of Conversion	Aggregate Principal Amount Remaining Subsequent to Conversion (or original Principal Amount)	Company Attest

EXHIBIT 10.1

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement") is dated as of June 22, 2015, between MELA Sciences, Inc., a Delaware corporation (the "Company"), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a "Purchaser" and collectively, the "Purchasers").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 promulgated thereunder, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

WHEREAS, the Company is contemplating the financing pursuant to this Agreement in order to have sufficient funds available to complete the acquisition of certain assets from Photomedex, Inc. and its subsidiary as set forth in the APA.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

ARTICLE I.

DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Debentures (as defined herein), and (b) the following terms have the meanings set forth in this Section 1.1:

"Acquiring Person" shall have the meaning ascribed to such term in Section 4.7.

"Action" shall have the meaning ascribed to such term in Section 3.1(j).

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Aggregate Subscription Amount" means the aggregate of the Subscription Amounts.

"APA" means that certain Asset Purchase Agreement by and among the Company, Photomedex, Inc. and Photomedex Technology, Inc.

"Board of Directors" means the board of directors of the Company.

"Broadfin" means Broadfin Capital, LLC and any fund managed or advised by it including, but not limited to, Broadfin Healthcare Master Fund, Ltd.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Closing" means the closing of the purchase and sale of the Securities pursuant to Section 2.1.

"Closing Bid Price" means the closing bid price of the Common Stock on the Trading Market, as reported by Bloomberg L.P.

"Closing Date" means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers' each Purchaser's obligations to pay such Purchaser's Subscription Amount and (ii) the Company's obligations to deliver the Securities, in each case, have been satisfied or waived, but in no event later than the fifth Trading Day following the date hereof.

"Collateral" shall have the meaning ascribed to such term in the Security Agreement.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Company Counsel" means Duane Morris LLP, with offices located at 20 South 17th Street, Philadelphia, PA 19103.

"Conversion Shares" means the shares of Common Stock issuable upon conversion of the Debentures.

"Debentures" means the 2.25% Senior Secured Convertible Debentures due, subject to the terms therein, on June 22, 2020, issued by the Company hereunder to each of the Purchasers whose Subscription Amount includes Debentures, in the form of Exhibit A attached hereto.

"Debt Securities" means the Debentures and the Notes, or any of them, as the context may require.

"Device" shall have the meaning ascribed to such term in Section 3.1(kk).

"Disclosure Schedules" shall have the meaning ascribed to such term in Section 3.1.

"EGS" means Ellenoff Grossman & Schole LLP, with offices located at 1345 Avenue of the Americas, New York, New York 10105-0302.

"Effective Date" means the earliest of the date that (a) the initial Registration Statement has been declared effective by the Commission, (b) all of the Securities have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions or (c) following the one year anniversary of the Closing Date provided that a holder of Registrable Securities is not an Affiliate of the Company, all of the Securities may be sold pursuant to an exemption from registration under Section 4(1) of the Securities Act without volume or manner-of-sale restrictions and Company counsel has delivered to such holders a standing written unqualified opinion that resales may then be made by such holders of the Securities pursuant to such exemption which opinion shall be in form and substance reasonably acceptable to such holders.

"Escrow Agent" means U.S. BANK NATIONAL ASSOCIATION, a national banking association.

"Escrow Agreement" means the escrow agreement entered into prior to the date hereof, by and among the Company, the Escrow Agent the other signatories thereto pursuant to which each of the Purchasers shall deposit its Subscription Amount with the Escrow Agent to be applied to the transactions contemplated hereunder and under the APA.

"Evaluation Date" shall have the meaning ascribed to such term in Section 3.1(r).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Exempt Issuance" means the issuance of (a) shares of Common Stock or options to employees, officers, directors or consultants (provided that such issuances to consultant shall not exceed $200,000 of shares in any 12 month period) of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and securities issued under the other Transaction Documents and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, and (d) up to $100,000 per 30 day period, for up to seven 30 day periods, in unregistered Common Stock in lieu of cash for payment of outstanding invoices for products, components and services provided by vendors, or in connection with the sale of the right(s) to such payment(s), in a transaction approved by the Board of Directors; provided that the holders of such shares of Common Stock shall not have any registration rights for such shares or price protections, including but not limited to resets, ratchets or make-whole provisions, and no other consideration shall be paid to the vendor or its assignees in connection with such issuance.

"Existing Debt Amendments" means the Omnibus Amendment to Transaction Documents entered into as of the Closing Date among the Company and the Purchasers amending the terms of documents relating to the Company's 4% Senior Secured Convertible Debentures due July 29, 2019, in form and substance satisfactory to the Purchasers.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended.

"FDA" shall have the meaning ascribed to such term in Section 3.1(kk).

"FDCA" shall have the meaning ascribed to such term in Section 3.1(kk).

"Fully Registered" means the earliest to occur of: (a) one or more Registration Statements have been declared effective by the Commission covering all of the shares of Common Stock which may be issued pursuant to the Debentures and the Warrants, (b) all of the Securities have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions or (c) following the one year anniversary of the Closing Date provided that a holder of Registrable Securities is not an Affiliate of the Company, all of the Securities may be sold pursuant to an exemption from registration under Section 4(1) of the Securities Act without volume or manner-of-sale restrictions and Company counsel has delivered to such holders a standing written unqualified opinion that resales may then be made by such holders of the Securities pursuant to such exemption which opinion shall be in form and substance reasonably acceptable to such holders.

"GAAP" shall have the meaning ascribed to such term in Section 3.1(h).

"GP" means Goodwin Procter, LLP, Exchange Place, 53 State Street, Boston, MA 02110.

"Indebtedness" shall have the meaning ascribed to such term in Section 3.1(aa).

"Intellectual Property Rights" shall have the meaning ascribed to such term in Section 3.1(o).

"Intellectual Property Security Agreement" means the Security Agreement, dated the date hereof, among the Company and the Purchasers, in the form of Exhibit F attached hereto.

"Legend Removal Date" shall have the meaning ascribed to such term in Section 4.1(c).

"Liens" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

"Major Investors" means Broadfin and Sabby.

"Material Adverse Effect" shall have the meaning assigned to such term in Section 3.1(b).

"Material Permits" shall have the meaning ascribed to such term in Section 3.1(m).

"Maximum Rate" shall have the meaning ascribed to such term in Section 5.17.

"Notes" means the senior secured notes of the Company issued hereunder to each of the Purchasers whose Subscription Amount includes Notes, in the form of Exhibit I attached hereto.

"Participation Maximum" shall have the meaning ascribed to such term in Section 4.12(a).

"Permitted Indebtedness" shall have the meaning ascribed to such term in the Debentures.

"Permitted Liens" shall have the meaning ascribed to such term in the Debentures.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Post-Closing Agreement" means the Post-Closing Agreement dated as of the Closing Date, entered into between the Company and the Agent, in the form of Exhibit H hereto.

"Pre-Notice" shall have the meaning ascribed to such term in Section 4.12(b).

"Pro Rata Portion" shall have the meaning ascribed to such term in Section 4.12(e).

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Public Information Failure" shall have the meaning ascribed to such term in Section 4.3(b).

"Public Information Failure Payments" shall have the meaning ascribed to such term in Section 4.3(b).

"Purchaser Party" shall have the meaning ascribed to such term in Section 4.10.

"Registration Rights Agreement" means the Registration Rights Agreement, dated the date hereof, among the Company and the Purchasers, in the form of Exhibit B attached hereto.

"Registration Statement" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Underlying Shares by each Purchaser as provided for in the Registration Rights Agreement.

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(e).

"Required Minimum" means, as of any date, the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Shares issuable upon exercise in full of all Warrants or conversion in full of all Debentures, ignoring any conversion or exercise limits set forth therein.

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Sabby" means Sabby Management, LLC and any fund managed or advised by it including, but not limited to, Sabby Healthcare Volatility Master Fund, Ltd. and Sabby Volatility Warrant Master Fund, Ltd.

"SEC Reports" shall have the meaning ascribed to such term in Section 3.1(h).

"Securities" means the Debentures, the Notes, the Warrants, the Warrant Shares and the Underlying Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Security Agreement" means the Security Agreement, dated the date hereof, among the Company and the Purchasers, in the form of Exhibit D attached hereto.

"Security Documents" shall mean the Security Agreement and any other documents and filings required thereunder in order to grant the Purchasers a first priority security interest in the assets of the Company and the Subsidiaries as provided in the Security Agreement, including all UCC-1 filing receipts.

"Shareholder Approval" means such approval required by the applicable rules and regulations of the Nasdaq Stock Market (or any successor entity) from the shareholders of the Company with respect to the transactions contemplated by this Agreement and the other Transaction Documents, including approval of the (i) issuance of the Debentures and the issuance of the Conversion Shares upon conversion of the Debentures at $0.75 per share (subject to adjustment as provided therein); (ii) the issuance of the Warrants and the issuance of the Warrant Shares at an exercise price of $0.75 per share (subject to adjustment as provided therein); (iii) the Warrant Amendments (pursuant to which the existing warrants held by each of the Purchasers whose Subscription Amount exceeds $5,000,000 shall be amended such that the exercise price thereof shall be reduced to $0.75 (subject adjustment as provided therein); (iv) the issuance of any Conversion Shares or Warrant Shares that may be issued pursuant to the anti-dilution provisions in the Debentures and/or Warrants; (v) the issuance of shares of Common Stock which may be issued as payment of interest on the Debentures as provided therein; (vi) the Existing Debt Amendments and the issuance of the Notes (if necessary); (vii) amendment of the Company's certificate of incorporation (the "Charter Amendment") to increase the number of shares of authorized Common Stock to permit the valid issuance of all of the shares of Common Stock potentially issuable under the Debentures, Warrants and Warrant Amendments; and (viii) any other terms contained in this Agreement or the other Transaction Documents which may require shareholder approval to be given full force and effect.

"Short Sales" means all "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include the location and/or reservation of borrowable shares of Common Stock).

"Subscription Amount" means, as to each Purchaser, the sum of (i) the aggregate amount to be paid by such Purchaser for the purchase of Debentures, and (ii) the aggregate amount to be paid by such Purchaser for the purchase of Notes, in each case as specified below such Purchaser's name on the signature pages to this Agreement, in United States dollars and in immediately available funds.

"Subsequent Financing" shall have the meaning ascribed to such term in Section 4.12(a).

"Subsequent Financing Notice" shall have the meaning ascribed to such term in Section 4.12(b).

"Subsidiary" means any subsidiary of the Company as set forth on Schedule 3.1(a) and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

"Subsidiary Guarantee" means the Subsidiary Guarantee in the form of Exhibit G attached hereto.

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange or the Over-the-Counter Bulletin Board (or any successors to any of the foregoing).

"Transaction Documents" means this Agreement, the Debentures, the Notes, the Warrants, the Registration Rights Agreement, the Warrant Amendments, the Existing Debt Amendments, the Escrow Agreement, the Security Agreement, the Subsidiary Guarantee, all exhibits and schedules thereto and hereto and any other documents, certificates, instruments or agreements executed in connection with the transactions contemplated hereunder.

"Transfer Agent" means American Stock Transfer & Trust Company, LLC, the current transfer agent of the Company, with a mailing address of 6201 15th Avenue, Brooklyn, New York 11219 and a facsimile number of (718) 921-8336, and any successor transfer agent of the Company.

"Underlying Shares" means the shares of Common Stock issued and issuable upon conversion of the Debentures, upon exercise of the Warrants and issued and issuable in lieu of the cash payment of interest on the Debentures in accordance with the terms of the Debentures.

"Variable Rate Transaction" shall have the meaning ascribed to such term in Section 4.13(b).

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the OTC Bulletin Board is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported in the "Pink Sheets" published by Pink OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"Warrant Amendment(s)" means the amendments to each of the warrants to purchase Common Stock held prior to the Closing by each of the Purchasers whose Subscription Amount exceeds $5,000,000, such that the exercise price thereof shall be reduced to $0.75 (subject to adjustment as provided therein), in form and substance satisfactory to such Purchasers.

"Warrants" means, collectively, the Common Stock purchase warrants delivered to the Purchasers at Closing in accordance with Section 2.2(a) hereof, which Warrants shall be exercisable immediately and have a term of exercise equal to five years, in the form of Exhibit C attached hereto.

"Warrant Shares" means the shares of Common Stock issuable upon exercise of the Warrants.

ARTICLE II.

PURCHASE AND SALE

2.1 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, up to an aggregate of $42,500,000 of Subscription Amounts of the Debentures, Notes and Warrants. Each Purchaser shall deliver to the Escrow Agent, via wire transfer or a certified check, immediately available funds equal to its Subscription Amount and the Company shall deliver to each Purchaser its respective Debentures, Notes and Warrants as determined pursuant to Section 2.2(a), and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur at the offices of GP or such other location as the parties shall mutually agree.

2.2 Deliveries.

(a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:

(i) this Agreement duly executed by the Company;

(ii) a legal opinion of Company Counsel, substantially in the form of Exhibit E attached hereto;

(iii) to each Purchaser whose Subscription Amount includes Debentures, a Debenture with a principal amount equal to such Purchaser's Subscription Amount for Debentures, registered in the name of such Purchaser and duly executed by the Company;

(iv) to each Purchaser whose Subscription Amount includes Notes, a Note with a principal amount equal to such Purchaser's Subscription Amount for Notes, registered in the name of such Purchaser and duly executed by the Company;

(v) to each Purchaser whose Subscription Amount includes Notes, a Warrant registered in the name of such Purchaser to purchase up to 300,000 Warrant Shares per $1,000,000 of such Purchaser's Subscription Amount of Notes, with an exercise price equal to $0.75, subject to adjustment as provided therein (such Warrant certificate may be delivered within three Trading Days of the Closing Date);

(vi) the Security Agreement, duly executed by the Company;

(vii) the Registration Rights Agreement duly executed by the Company;

(viii) the Warrant Amendments duly executed by the Company;

(ix) the Existing Debt Amendments duly executed by the Company and the other parties required thereto (other than the Purchasers);

(x) the Escrow Agreement duly executed by the Company and the Escrow Agent;

(xi) the Intellectual Property Security Agreement duly executed by the Company;

(xii) the Post-Closing Agreement duly executed by the Company; and

(xiii) such other documents, instruments, certificates or agreements as the Purchasers may reasonably request.

(b) On or prior to the Closing Date, each Purchaser shall deliver or cause to be delivered to the Company or the Escrow Agent, as applicable, the following:

(i) this Agreement duly executed by such Purchaser;

(ii) to the Escrow Agent, such Purchaser's Subscription Amount by wire transfer to the account specified in the Escrow Agreement;

(iii) the Security Agreement duly executed by the Agent;

(iv) the Registration Rights Agreement duly executed by such Purchaser; and

(v) the Intellectual Property Security Agreement duly executed by the Agent.

2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects on the Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to the Closing Date shall have been performed;

(iii) the Company shall have received verbal and/or written Nasdaq approval; and

(iv) the delivery by each Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The respective obligations of the Purchasers hereunder in connection with the Closing are subject to the following conditions being met:

(i) the accuracy in all material respects when made and on the Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the Closing Date shall have been performed, including verbal and/or written Nasdaq approval;

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;

(iv) there shall have been no Material Adverse Effect with respect to the Company since the date hereof;

(v) the APA shall have been duly executed and delivered by all parties thereto and shall be in full force and effect;

(vi) the Purchasers shall have received evidence satisfactory to the Purchasers that the Closing (as defined in the APA) has been duly consummated or will be duly consummated immediately upon the funding of the Aggregate Subscription Amount and on terms and conditions acceptable to the Purchasers in accordance with the APA without material waiver of any term or condition of the APA which has not been consented to by the Purchasers;

(vii) the Aggregate Subscription Amount shall be less than or equal to the Purchase Price (as defined in the APA);

(viii) the closing of the transactions contemplated by the APA shall be completed simultaneously with the closing of the transactions hereunder; and

(ix) from the date hereof to the Closing Date, trading in the Common Stock shall not have been suspended by the Commission or the Company's principal Trading Market and, at any time prior to the Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of such Purchaser, makes it impracticable or inadvisable to purchase the Securities at the Closing.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to each Purchaser:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company are set forth on Schedule 3.1(a). The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not: (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.6 of this Agreement, (ii) the filing with the Commission pursuant to the Registration Rights Agreement, (iii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Securities and the listing of the Underlying Shares for trading thereon in the time and manner required thereby; (iv) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws; (v) Shareholder Approval (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Company will, in accordance with Section 4.11(a), reserve from its duly authorized capital stock a number of shares of Common Stock for issuance of the Underlying Shares at least equal to the Required Minimum.

(g) Capitalization. The capitalization of the Company is as set forth on Schedule 3.1(g), which Schedule 3.1(g) shall also include the number of shares of Common Stock owned beneficially, and of record, by Affiliates of the Company as of the date hereof. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the issuance or exercise of stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. Except as set forth on Schedule 3.1(g), no Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents that has not either (i) been waived by such Person or (ii) expired by its terms. Except as set forth on Schedule 3.1(g) and as a result of the purchase and sale of the Securities, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchasers) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all applicable federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. Except for Shareholder Approval, no further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company has never been an issuer subject to Rule 144(i) under the Securities Act. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the SEC Reports, except as set forth on Schedule 3.1(i) or as specifically disclosed in a subsequent SEC Report filed prior to the date hereof: (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement or as set forth on Schedule 3.1(i), no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made.

(j) Litigation. Except as set forth on Schedule 3.1(j), there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Labor Relations. No material labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all applicable U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(n) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(o) Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights as described in the SEC Reports as necessary or required for use in connection with their respective businesses and which the failure to so have could have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). None of, and neither the Company nor any Subsidiary has received a written notice that any of, the Intellectual Property Rights has expired, terminated or been abandoned. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(p) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage at least equal to the Aggregate Subscription Amount. Neither the Company nor any Subsidiary has been notified that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business without a significant increase in cost.

(q) Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of $120,000 other than for: (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(r) Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) of the Company and its Subsidiaries that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(s) Certain Fees. No brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(t) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(u) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(v) Registration Rights. Other than each of the Purchasers and except as set forth on Schedule 3.1(v), no Person has any right to cause the Company to effect the registration under the Securities Act of any securities of the Company or any Subsidiary.

(w) Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. Except as set forth on Schedule 3.1(w), the Company has not, in the 12 months preceding the date hereof, received notice from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is in compliance with all such listing and maintenance requirements.

(x) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(y) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents and the APA, the Company confirms that neither it nor any other Person acting on its behalf has provided any of the Purchasers or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchasers will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(z) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(aa) Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder: (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. Schedule 3.1(aa) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of $50,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of $50,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(bb) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no basis for any such claim.

(cc) No General Solicitation. Neither the Company nor any person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered the Securities for sale only to the Purchasers and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(dd) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has: (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(ee) Accountants. The Company's accounting firm is EisnerAmper LLP. To the knowledge and belief of the Company, such accounting firm: (i) is a registered public accounting firm as required by the Exchange Act and (ii) shall express its opinion with respect to the financial statements to be included in the Company's Annual Report for the fiscal year ending December 31, 2015.

(ff) Seniority. As of the Closing Date, no Indebtedness or other claim against the Company is senior to the Debt Securities in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(gg) No Disagreements with Accountants and Lawyers. There are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and, the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(hh) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(ii) Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding (except for Sections 3.2(g) and 4.15 hereof), it is understood and acknowledged by the Company that: (i) None of the Purchasers has been asked by the Company to agree, nor has any Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term, (ii) past or future open market or other transactions by any Purchaser, specifically including, without limitation, Short Sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities, (iii) any Purchaser, and counter-parties in "derivative" transactions to which any such Purchaser is a party, directly or indirectly, may presently have a "short" position in the Common Stock and (iv) each Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (y) one or more Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Underlying Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

(jj) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Company's placement agent in connection with the placement of the Securities.

(kk) FDA. To the Company's knowledge, as to each product subject to the jurisdiction of the U.S. Food and Drug Administration ("FDA") under the Federal Food, Drug and Cosmetic Act, as amended, and the regulations thereunder ("FDCA") that is manufactured, packaged, labeled, tested, distributed, sold, and/or marketed by the Company or any of its Subsidiaries (each such product, a "Device"), such Device is being manufactured, packaged, labeled, tested, distributed, sold and/or marketed by the Company in compliance with all applicable requirements under FDCA and similar laws, rules and regulations relating to registration, investigational use, premarket clearance, licensure, or application approval, good manufacturing practices, good laboratory practices, good clinical practices, product listing, quotas, labeling, advertising, record keeping and filing of reports, except where the failure to be in compliance would not have a Material Adverse Effect. Other than as disclosed in the SEC Reports, there is no pending, completed or, to the Company's knowledge, threatened, enforcement action (including any lawsuit, arbitration, or legal or administrative or regulatory proceeding, charge, complaint, or investigation) against the Company or any of its Subsidiaries, and none of the Company or any of its Subsidiaries has received any notice, warning letter or other communication from the FDA or any other governmental entity, which (i) contests licensure, registration, premarket approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any Device, (ii) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the withdrawal of advertising or sales promotional materials relating to, any Device, (iii) imposes a clinical hold on any clinical investigation by the Company or any of its Subsidiaries, (iv) enjoins production at any facility of the Company or any of its Subsidiaries, (v) enters or proposes to enter into a consent decree of permanent injunction with the Company or any of its Subsidiaries, or (vi) otherwise alleges any violation of any laws, rules or regulations by the Company or any of its Subsidiaries, and which, either individually or in the aggregate, would have a Material Adverse Effect. To the Company's knowledge, the properties, business and operations of the Company have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA. The Company has not been informed by the FDA that the FDA will prohibit the marketing, sale, license or use in the United States of any product proposed to be developed, produced or marketed by the Company nor has the FDA expressed any concern as to approving or clearing for marketing any product being developed or proposed to be developed by the Company.

(ll) Form S-3 Eligibility. The Company is eligible to register the resale of the Underlying Shares for resale by the Purchaser on Form S-3 promulgated under the Securities Act.

(mm) Stock Option Plans. Each stock option granted by the Company under the Company's stock option plan was granted (i) in accordance with the terms of the Company's stock option plan and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(nn) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC").

(oo) U.S. Real Property Holding Corporation. The Company is not and has never been a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon Purchaser's request.

(pp) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(qq) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company and any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(rr) No Disqualification Events. With respect to the Securities to be offered and sold hereunder in reliance on Rule 506 under the Securities Act, none of the Company, any of its predecessors, or any affiliated issuer, nor, to the Company's knowledge, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Purchasers a copy of any disclosures provided thereunder.

(ss) Other Covered Persons. The Company is not aware of any person (other than any Issuer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of the Securities.

(tt) Notice of Disqualification Events. The Company will notify the Purchasers and the Placement Agent in writing, prior to the Closing Date of (i) any Disqualification Event of which it becomes aware relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

(uu) APA. The Company has provided to the Purchasers true and correct copies of the APA, including true and correct copies of the final disclosure schedules referenced in and/or attached thereto. All of the conditions precedent to the Closing (as defined in the APA) have been satisfied or waived in writing other than the payment of the Purchase Price (as defined in the APA). Immediately upon the funding of the Subscription Amount, the Closing (as defined in the APA) will be consummated in accordance with the terms and conditions of the APA and all applicable laws, without material waiver of any term or condition of the APA that has not been consented to by the Purchasers. The Aggregate Subscription Amount is less than or equal to the Purchase Price (as defined in the APA).

3.2 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein):

(a) Organization; Authority. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except: (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Own Account. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Purchaser's right to sell the Securities pursuant to the Registration Statement or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time such Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it exercises any Warrants or converts any Debentures, it will be an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act.

(d) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment. Such Purchaser and its advisors, if any, have been furnished with all materials relating to the business, financial condition and results of operations of the Company, and materials relating to the offer and sale of the Securities, that have been requested by such Purchaser or its advisors, if any. Such Purchaser acknowledges and understands that its investment in the Securities involves a significant degree of risk.

(e) General Solicitation. Such Purchaser is not purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or any other general solicitation or general advertisement.

(f) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and the SEC Reports and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment.

(g) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, such Purchaser has not directly or indirectly, nor has any Person acting on behalf of or pursuant to any understanding with such Purchaser, executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that such Purchaser first received a term sheet (written or oral) from the Company or any other Person representing the Company setting forth the material terms of the transactions contemplated hereunder and ending immediately prior to the execution hereof. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the representation set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement. Other than to other Persons party to this Agreement, such Purchaser has maintained the confidentiality of all disclosures made to it in connection with this transaction (including the existence and terms of this transaction). Notwithstanding the foregoing, for avoidance of doubt, nothing contained herein shall constitute a representation or warranty, or preclude any actions, with respect to the identification of the availability of, or securing of, available shares to borrow in order to effect Short Sales or similar transactions in the future.

The Company acknowledges and agrees that the representations contained in Section 3.2 shall not modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transaction contemplated hereby.

ARTICLE IV.

OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and the Registration Rights Agreement and shall have the rights and obligations of a Purchaser under this Agreement and the Registration Rights Agreement.

(b) The Purchasers agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities in the following form:

[NEITHER] THIS SECURITY [NOR THE SECURITIES INTO WHICH THIS SECURITY IS [EXERCISABLE] [CONVERTIBLE]] HAS [NOT] BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON [EXERCISE] [CONVERSION] OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and who agrees to be bound by the provisions of this Agreement and the Registration Rights Agreement and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including, if the Securities are subject to registration pursuant to the Registration Rights Agreement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of Selling Stockholders (as defined in the Registration Rights Agreement) thereunder.

(c) Certificates evidencing the Underlying Shares shall not contain any legend (including the legend set forth in Section 4.1(b) hereof): (i) while a registration statement (including the Registration Statement) covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Underlying Shares pursuant to Rule 144, (iii) if such Underlying Shares are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Underlying Shares and without volume or manner-of-sale restrictions or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent promptly after the Effective Date if required by the Transfer Agent to effect the removal of the legend hereunder. If all or any portion of a Debenture is, converted or any portion of a Warrant is exercised at a time when there is an effective registration statement to cover the resale of the Underlying Shares, or if such Underlying Shares may be sold under Rule 144 and the Company is then in compliance with the current public information required under Rule 144, or if the Underlying Shares may be sold under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Underlying Shares and without volume or manner-of-sale restrictions or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Underlying Shares shall be issued free of all legends. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 4.1(c), it will, no later than three Trading Days following the delivery by a Purchaser to the Company or the Transfer Agent of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend (such third Trading Day, the "Legend Removal Date"), deliver or cause to be delivered to such Purchaser a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4. Certificates for Underlying Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser's prime broker with the Depository Trust Company System as directed by such Purchaser.

(d) In addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, for each $1,000 of Underlying Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 4.1(c), $10 per Trading Day (increasing to $20 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such certificate is delivered without a legend. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Company's failure to deliver certificates representing any Securities as required by the Transaction Documents, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

(e) Each Purchaser, severally and not jointly with the other Purchasers, agrees with the Company that such Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

4.2 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Underlying Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.3 Furnishing of Information; Public Information.

(a) Until no Purchaser owns Securities, the Company covenants to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

(b) At any time during the period commencing from the six (6) month anniversary of the date hereof and ending at such time that all of the Securities may be sold without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company shall fail for any reason to satisfy the current public information requirement under Rule 144(c) (a "Public Information Failure") then, in addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Securities, an amount in cash equal to two percent (2.0%) of the Aggregate Subscription Amount of such Purchaser's Securities on the day of a Public Information Failure and on every thirtieth (30^{th}) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for the Purchasers to transfer the Underlying Shares pursuant to Rule 144. The payments to which a Purchaser shall be entitled pursuant to this Section 4.3(b) are referred to herein as "Public Information Failure Payments." Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3^{rd}) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Public Information Failure, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

4.4 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.5 Conversion and Exercise Procedures. Each of the form of Notice of Exercise included in the Warrants and the form of Notice of Conversion included in the Certificate of Designation or the Debentures set forth the totality of the procedures required of the Purchasers in order to exercise the Warrants or convert the Debentures. No additional legal opinion, other information or instructions shall be required of the Purchasers to exercise their Warrants or convert their Debentures. Without limiting the preceding sentences, no ink-original Notice of Exercise or Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise or Notice of Conversion be required in order to exercise the Warrants or convert the Debentures. The Company shall honor exercises of the Warrants and conversions of the Debentures and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.6 Securities Laws Disclosure; Publicity. The Company shall, by 9:00 a.m. (New York City time) on the Trading Day immediately following the date hereof, file a Current Report on Form 8-K and press release disclosing the material terms of the transactions contemplated hereby and the APA, including the Transaction Documents, the APA and all material agreements related thereto as exhibits thereto. From and after the issuance of such press release and 8-K, the Company represents to the Purchaser that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by this Agreement, the other Transaction Documents, the APA or the documents or transactions contemplated herein or therein. The Company and each Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser, or without the prior consent of each Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except: (a) as required by federal securities law in connection with (i) any registration statement contemplated by the Registration Rights Agreement and (ii) the filing of final Transaction Documents with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchasers with prior notice of such disclosure permitted under this clause (b).

4.7 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Purchaser is an "Acquiring Person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

4.8 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company covenants and agrees that neither it, nor any other Person acting on its behalf, will provide any Purchaser or its agents or counsel with any information that the Company believes constitutes material non-public information, unless prior thereto such Purchaser shall have entered into a written agreement with the Company regarding the confidentiality and use of such information. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.9 Use of Proceeds. The Company shall use the net proceeds from the sale of the Securities hereunder to pay the Purchase Price (as defined in the APA) and related costs, fees and expenses, and not for any other purpose.

4.10 Indemnification of Purchasers. Subject to the provisions of this Section 4.10, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is based upon a breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which constitutes fraud, gross negligence, willful misconduct or malfeasance). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to (A) any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents, or (B) any conduct by such Purchaser Party which constitutes fraud, gross negligence, willful misconduct or malfeasance. The indemnification required by this Section 4.10 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.11 Reservation and Listing of Securities.

(a) The Company shall use its best efforts to promptly seek the Shareholder Approval and, at all times thereafter the Company shall use its best efforts to maintain a reserve from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents. The Company shall use its best efforts to file the Charter Amendment with the Secretary of State of the State of Delaware to increase the number of authorized shares of Common Stock to permit the exercise of this Warrants and conversion of the Debentures in their entirety within one (1) Business Day of receiving Shareholder Approval.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than 135% of (i) the Required Minimum on such date, minus (ii) the number of shares of Common Stock previously issued pursuant to the Transaction Documents, then the Board of Directors shall use its best efforts to amend the Company's certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time (minus the number of shares of Common Stock previously issued pursuant to the Transaction Documents), as soon as possible and in any event not later than the 90th day (120th day in the event of "full review" of the related proxy statement by the Commission) after such date; provided that the Company will not be required at any time to authorize a number of shares of Common Stock greater than the maximum remaining number of shares of Common Stock that could possibly be issued after such time pursuant to the Transaction Documents.

(c) The Company shall, if applicable: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market as soon as possible thereafter, (iii) provide to the Purchasers evidence of such listing or quotation and (iv) use its best efforts to maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. The Company agrees to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer. In addition, the Company shall provide each shareholder entitled to vote at a special or annual meeting of the shareholders of the Company, at the earliest practical date after the Closing Date, but in no event later than 90 days after the Closing Date (120 days after the Closing Date in the event of a "full review" of the proxy statement), a proxy statement, substantially in the form which has been previously reviewed by the Purchasers and GP, at the expense of the Company, soliciting each shareholder's vote at such shareholder's meeting for approval of resolutions providing for the Shareholder Approval, with the recommendation of the Board of Directors that such proposal be approved, and the Company shall solicit proxies from its shareholders in connection therewith in the same manner as all other management proposals in such proxy statement, and all management-appointed proxyholders shall vote their proxies in favor of such proposal. The Company shall use its best efforts to obtain such Shareholder Approval. If the Company does not obtain Shareholder Approval at the first meeting, the Company shall call a meeting every three (3) months thereafter to seek Shareholder Approval until the earlier of the date Shareholder Approval is obtained or the Securities are no longer outstanding.

4.12 Participation in Future Financing.

(a) Until the date on which no Debentures, Notes or Warrants remain outstanding, upon any issuance by the Company or any of its Subsidiaries of Common Stock, Common Stock Equivalents for cash consideration, Indebtedness or a combination of units hereof (a "Subsequent Financing"), each Purchaser shall have the right to participate in up to an amount of the Subsequent Financing equal to 50% of the Subsequent Financing (the "Participation Maximum") on the same terms, conditions and price provided for in the Subsequent Financing, subject to each such Purchaser meeting a minimum threshold for participation in such Subsequent Financing determined by the holders of a majority of the principal amount of the Debt Securities then outstanding.

(b) At least three (3) Trading Days prior to the closing of the Subsequent Financing, the Company shall deliver to each Purchaser a written notice of its intention to effect a Subsequent Financing (a "Subsequent Financing Notice"). The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet or similar document relating thereto as an attachment.

(c) Any Purchaser desiring to participate in such Subsequent Financing must provide written notice to the Company by not later than 5:30 p.m. (New York City time) on the second (2nd) Trading Day after all of the Purchasers have received the Subsequent Financing Notice that such Purchaser is willing to participate in the Subsequent Financing, the amount of such Purchaser's participation, and representing and warranting that such Purchaser has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. If the Company receives no such notice from a Purchaser as of such second (2^{nd}) Trading Day, such Purchaser shall be deemed to have notified the Company that it does not elect to participate.

(d) If by 5:30 p.m. (New York City time) on the second (2nd) Trading Day after all of the Purchasers have received the Subsequent Financing Notice, notifications by the Purchasers of their willingness to participate in the Subsequent Financing (or to cause their designees to participate) is, in the aggregate, less than the Participation Maximum, then the Company may effect the remaining portion of such Participation Maximum on the terms and with the Persons set forth in the Subsequent Financing Notice.

(e) If by 5:30 p.m. (New York City time) on the second (2nd) Trading Day after all of the Purchasers have received the Subsequent Financing Notice, the Company receives responses to a Subsequent Financing Notice from Purchasers seeking to purchase more than the aggregate amount of the Participation Maximum, each such Purchaser shall have the right to purchase its Pro Rata Portion (as defined below) of the Participation Maximum. "Pro Rata Portion" means the ratio of (x) the Subscription Amount of Securities purchased on the Closing Date by a Purchaser participating under this Section 4.12 and (y) the sum of the aggregate Subscription Amounts of Securities purchased on the Closing Date by all Purchasers participating under this Section 4.12.

(f) The Company must provide the Purchasers with a second Subsequent Financing Notice, and the Purchasers will again have the right of participation set forth above in this Section 4.12, if the Subsequent Financing subject to the initial Subsequent Financing Notice is not consummated for any reason on the terms set forth in such Subsequent Financing Notice within thirty (30) Trading Days after the date of the initial Subsequent Financing Notice.

(g) The Company and each Purchaser agree that if any Purchaser elects to participate in the Subsequent Financing, the transaction documents related to the Subsequent Financing shall not include any term or provision whereby such Purchaser shall be required to agree to any restrictions on trading as to any of the Securities purchased hereunder or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, this Agreement, without the prior written consent of such Purchaser.

(h) Notwithstanding anything to the contrary in this Section 4.12 and unless otherwise agreed to by such Purchaser, the Company shall either confirm in writing to such Purchaser that the transaction with respect to the Subsequent Financing has been abandoned or shall publicly disclose its intention to issue the securities in the Subsequent Financing, in either case in such a manner such that such Purchaser will not be in possession of any material, non-public information, by the seventh (7th) Business Day following delivery of the Subsequent Financing Notice. If by such seventh (7th) Business Day, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, and no notice regarding the abandonment of such transaction has been received by such Purchaser, such transaction shall be deemed to have been abandoned and such Purchaser shall not be deemed to be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries.

(i) Notwithstanding the foregoing, this Section 4.12 shall not apply in respect of an Exempt Issuance.

4.13 Subsequent Equity Sales.

(a) From the date hereof until 90 days after the Underlying Shares are Fully Registered, neither the Company nor any Subsidiary shall issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents.

(b) From the date hereof until the date that is twelve (12) months following the date the Underlying Shares are Fully Registered, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents (or a combination of units thereof) involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. For purposes of clarity, a Variable Rate Transaction shall include any drawdown on any existing or future at-the-market facility or equity line agreement of the Company. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(c) Unless Shareholder Approval has been obtained and deemed effective, neither the Company nor any Subsidiary shall make any issuance whatsoever of Common Stock or Common Stock Equivalents to the extent the holders of Debentures would not be permitted, pursuant to the Debentures, to convert their respective outstanding Debentures, and the holders of warrants would not be permitted, pursuant to the Warrants, to exercise their respective Warrants in full, ignoring for such purposes the other conversion or exercise limitations therein. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(d) Notwithstanding the foregoing, this Section 4.13 shall not apply in respect of an Exempt Issuance, except that no Variable Rate Transaction shall be an Exempt Issuance.

4.14 Equal Treatment of Purchasers.

(a) No consideration (including any modification of any Transaction Document) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration is also offered to all of the parties to this Agreement. Further, the Company shall not make any payment of principal or interest on the Debt Securities in amounts which are disproportionate to the respective principal amounts outstanding on the Debt Securities at any applicable time. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise.

(b) The Purchasers agree that no Purchaser will assign or grant participations in its Notes in any manner other than an assignment or participation in all of the then outstanding Notes that is pro rata in amount assigned of all of the then outstanding Notes until the earlier of (i) 30 days after the date upon which the Company obtains the Shareholder Approval and (ii) November 30, 2015.

4.15 Certain Transactions and Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, covenants that neither it, nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.6, such Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents and the Disclosure Schedules. Notwithstanding the foregoing, and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (i) no Purchaser makes any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6, (ii) no Purchaser shall be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6 and (iii) no Purchaser shall have any duty of confidentiality to the Company or its Subsidiaries after the issuance of the initial press release as described in Section 4.6. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

4.16 Form D; Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon request of any Purchaser. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers at the Closing under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Purchaser.

4.17 Subsidiaries. In the event that the Company hereafter forms or acquires a domestic majority-owned Subsidiary, the Company shall cause such domestic majority-owned Subsidiary to execute and deliver each Purchaser the Subsidiary Guarantee (in addition to complying with the requirements of the Security Agreement).

4.18 Capital Changes. Until the one year anniversary of the date the Underlying Shares are Fully Registered, the Company shall not undertake a reverse or forward stock split or reclassification of the Common Stock without the prior written consent of the Purchasers holding a majority in interest of the Debt Securities, provided that this Section 4.18 shall not apply solely in connection with any reverse stock split that is conducted in order to meet or maintain compliance with the listing standards of any Trading Market.

4.19 [reserved]

4.20 Deposit Accounts. The Company and its Subsidiaries will deposit all payments from operations into accounts subject to the Control Agreement. Unless a Default has occurred and is continuing, Borrowers will be permitted to utilize such funds for operations.

4.21 Negative Covenants. The Company and each Subsidiary, each severally and not jointly and severally and where and as applicable as expressly indicated below, agree that until none of the Debt Securities remain outstanding, unless the Major Investors waive compliance in writing:

(a) Creation of Liens on Collateral. Neither the Company nor any Subsidiary will create, assume or suffer to exist any trust deed, mortgage, pledge, security interest, encumbrance or other lien (including the lien of an attachment, judgment or execution) securing a charge or obligation affecting any or all of the Collateral or accounts of the Company or its Subsidiaries, excluding only Permitted Liens.

(b) Creation of Liens on Pledged Interests. The Company and its Subsidiaries will not create, assume or suffer to exist any pledge, security interest, encumbrance or other lien (including the lien of an attachment, judgment or execution) securing a charge or obligation affecting any or all of the Pledged Interests (as such term is defined in the Security Agreement), excluding only Permitted Liens.

(c) Liquidation or Merger. Neither the Company nor any Subsidiary will liquidate, dissolve or enter into any consolidation, merger, partnership, joint venture, syndicate, pool, operating agreement or other combination, or convey, sell, dispose of, or assign any substantial part of their respective assets (other than inventory in the ordinary course of business). Neither the Company nor any Subsidiary will enter into a Fundamental Transaction (as such term is defined in the Warrants) without the consent of the Major Investors.

(d) Creation of Debt. Except as provided herein, neither the Company nor any of its Subsidiaries will incur, create or suffer to exist any indebtedness for borrowed money, or issue, discount or sell any obligation of the Company or its Subsidiaries, excluding only Permitted Indebtedness.

(e) Loan and Guaranties. Neither the Company nor any of its Subsidiaries will make any loans, advances or extensions of credit to any person, firm or corporation nor become a guarantor or surety directly or indirectly unless the Major Investors otherwise consent in writing, except that: Company may make short term operating advances or loans to its Subsidiaries or guarantee obligations of its Subsidiaries in the ordinary course of business.

(f) Transfers. Except as expressly permitted by this Agreement, the Company and its Subsidiaries will not transfer or permit to be transferred voluntarily or by operation of law any interest in the Collateral, the Subsidiaries or assets of the Company or its Subsidiaries. The Company or its Subsidiaries may create Subsidiaries so long as the Company and its Subsidiaries maintain the ownership and distributable equity interests percentages of not less than 100% as to new Subsidiaries and provides notice to the Major Investors thereof and delivers such additional assignments or amendments to the Security Documents satisfactory to the Major Investors covering such interests.

(g) Other Agreements. The Company and its Subsidiaries will not enter into any agreement that limits or restricts the ability of the Company or the Subsidiaries to comply with the terms of this Agreement and the other Transaction Documents.

(h) Limitation on Distributions and Redemptions. After the occurrence of an event of default, the Company will not declare, pay or make any dividend or distribution directly or indirectly in respect of any stockholder or equity interest or other interest. The Company will not directly or indirectly make any capital contribution to or purchase, redeem, acquire or retire any stockholder or equity interest in the Company (whether such interest is now or hereafter issued, outstanding or created) except with prior written consent and approval of the Major Investors.

(i) Limitation on Investments and New Businesses. Except as otherwise permitted herein, none of the Company or its Subsidiaries will: (a) make any expenditure or commitment or incur any obligation or enter into or engage in any transaction except in the ordinary course of business; (b) engage directly or indirectly in any business or conduct any operations except in connection with or incidental to their respective present businesses and operations; (c) make any acquisitions of or capital contributions to or other investments in any person or entity (whether by merger, stock purchase, asset purchase or other similar structure); or make any material acquisitions of asset other than in the ordinary course of business.

(j) Transactions with Affiliates. The Company and its Subsidiaries will not enter into any transaction with any Affiliate of the Company which would be required to be disclosed in any public filing with the Commission, unless such transaction is made on an arm's-length basis and expressly approved by a majority of the disinterested directors of the Company (even if less than a quorum otherwise required for board approval).

(k) Subsidiaries. The Company will not create or own any subsidiary without the prior written notice to the Purchasers including the name, state of organization, list of equity holders, principal place of business and intended purpose, geographical area and scope of business operations. The Company and Subsidiaries agree to cause the execution and delivery of such documents to collaterally assign the Company and its Subsidiaries' equity interest therein and to pledge, encumber or grant a security interest in such subsidiaries' assets.

(l) Repricing. The Company shall not reprice, or change the conversion, exercise or exchange rate or price on any option, warrant or other security convertible into or exercisable or exchangeable for shares of the Company's capital stock except to the extent explicitly contemplated herein.

4.22 Affirmative Covenants. Until none of the Debt Securities remain outstanding, unless the Major Investors otherwise consent in writing, the Company and the Subsidiaries, each severally and not jointly and severally, and where and as applicable as expressly indicated below, agree to perform or cause to be performed the following:

(a) Performance of Obligations. The Company and its Subsidiaries will each pay and perform all obligations under the Transaction Documents and the Security Documents. The Company and its Subsidiaries will perform all of their respective obligations under all material contracts and agreements relating to their respective businesses, and will enforce the performance of the obligations of the other parties thereto.

(b) Notifications. The Company and its Subsidiaries will give prompt written notice to the Major Investors of: (a) any event of default; (b) any event of default by a Subsidiary under a material contract to such subsidiary's portion of the business; (c) the breach by the Company of any provisions herein, in the other Transaction Documents or in any of the Security Documents; (d) all material litigation affecting any Company and/or its Subsidiaries or the Collateral; (e) the change or relocation of the principal place of business of any Company and its Subsidiaries; and (f) any other matter which has resulted in, or might result in: (1) a material adverse change in the financial condition of any Company and its Subsidiaries, or (2) a material adverse change in the ability of the Company and its Subsidiaries to perform their respective obligations, warranties, covenants and conditions of the Transaction Documents and Security Documents.

(c) Records Inspections. The Company and its Subsidiaries will each maintain full and accurate accounts and records of their respective operations on a basis consistent with prior periods. The Company and its Subsidiaries will permit the Major Investors and their designated representatives to have access to the Collateral and the records and accounts relating to the Collateral during normal business hours and upon at least two (2) Business Day's prior notice to perform such inspections, audits and examinations as the Major Investors might reasonably request from time to time.

(d) Deposit Accounts. The Company and its Subsidiaries will deposit all payments from operations into accounts subject to a deposit account control agreement as provided in the Security Documents. Unless a default has occurred and is continuing, The Company and its Subsidiaries will be permitted to utilize such funds for operations.

(e) Additional Documents. The Company and its Subsidiaries will promptly, on demand by the Major Investors, perform or cause to be performed such actions and execute or cause to be executed all such additional agreements, contracts, indentures, documents and instruments as might be reasonably requested by the Major Investors to satisfy the requirements of this Agreement, the Transaction Documents and the Security Documents.

(f) Governmental Approvals. The Company and its Subsidiaries will each obtain all permits, licenses, and necessary approvals from governmental authorities and abutting landowners which are considered necessary for the proper operation of their respective businesses.

(g) Taxes. All taxes, assessments, governmental charges and levies imposed on Company's and its Subsidiaries' assets, income and profits will be paid by the entity owing same prior to the date on which penalties attach thereto, provided that the Company and its Subsidiaries will not be required to pay any such charge which is being contested in good faith by proper proceedings as to which adequate reserves have been established.

(h) Access. Any representative of the Major Investors will have reasonable access to the Collateral and any other property owned by the Company and its Subsidiaries during normal business hours and upon at least two (2) Business Day's prior notice.

(i) Operation. The Company agrees to operate its businesses directly, or indirectly through the Subsidiaries, in a prudent and efficient manner consistent with normal industry practices and all governing laws and regulations.

(j) Qualification; Licenses. The Company and its Subsidiaries will take such actions or cause such actions to be taken as might be required to maintain the existence of all governmental and private permits, licenses and authorities of the Company and its Subsidiaries, necessary or desirable to the continuation of the Company and its Subsidiaries' businesses and will comply with all statutes and governmental regulations.

(k) Insurance. Policies of insurance will be continuously maintained by the Company and its Subsidiaries on the Collateral with companies, in amounts equal to the replacement cost of such Collateral, with business interruption, valuable documents and account receivable loss coverage and against risks satisfactory to the Bank. The Company and its Subsidiaries will furnish the Major Investors with copies of all certificates of insurance policies in effect and evidence of payment of the premium for each insurance policy upon the request of the Major Investors.

(l) Foundation Acquisition. The Company will complete its proposed acquisition pursuant to the APA on the Closing Date, simultaneously with the closing of this Agreement. After such acquisition, all of the assets acquired under the APA will be owned by the Company or a wholly-owned subsidiary of the Company.

ARTICLE V.

MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the Closing has not been consummated on or before June 25, 2015; provided, however, that such termination will not affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. The Company shall reimburse all legal and other due diligence fees and expenses incurred by Broadfin and Sabby (including those of GP and EGS) related to the transactions contemplated herein, in the other Transaction Documents and in the APA. The Company shall promptly pay such costs as requested by Broadfin and/or Sabby (whether at or after the Closing). Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion or exercise notice delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2^{nd}) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

5.5 Amendments; Waivers. No provision of this Agreement, or any agreement or instrument annexed as an exhibit hereto, may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchasers holding at least a majority in interest of the Securities then outstanding or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought; provided, however, unanimous consent shall be required for any amendment that would adversely affect any Purchaser; provided, further, that any amendment that would adversely affect any Purchaser entered into without unanimous consent will be void ab initio. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. The consent of the Major Investors may be satisfied by a written instrument signed, in the case of an amendment, by the Company and the Major Investors holding at least a majority in interest of the Debt Securities then outstanding.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5.8 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.10.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.10, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

5.10 Survival. The representations and warranties contained herein shall survive the Closing and the delivery of the Securities.

5.11 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that in the case of a rescission of a conversion of Debentures or exercise of a Warrant, the applicable Purchaser shall be required to return any shares of Common Stock subject to any such rescinded conversion or exercise notice concurrently with the return to such Purchaser of the aggregate exercise price paid to the Company for such shares and the restoration of such Purchaser's right to acquire such shares pursuant to such Purchaser's Warrant or Debenture (including, issuance of a replacement warrant certificate or debenture evidencing such restored right).

5.14 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.15 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.16 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

5.17 Usury. To the extent it may lawfully do so, the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any claim, action or proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by the Company to any Purchaser with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by such Purchaser to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Purchaser's election.

5.18 Independent Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance or non-performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. For reasons of administrative convenience only, each Purchaser and its respective counsel have chosen to communicate with the Company through GP. GP does not represent the Purchasers other than Broadfin. EGS does not represent the Purchasers other than Sabby. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers.

5.19 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

5.20 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.21 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

5.22 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

5.23 Waiver of Participation Right. Notwithstanding anything herein to the contrary, each of the Purchasers, on behalf of itself and each of its Affiliates, irrevocably and unconditionally waives any and all rights it may have pursuant to that certain Securities Purchase Agreement dated as of July 21, 2014 by and among the Company and the Purchasers named therein, including but not limited to Section 4.12 therein, and which conflict with the consummation of the transactions contemplated in the Transaction Documents.

5.24 Appointment of Agent. The Purchasers hereby appoint Broadfin Capital, LLC as their agent (in such capacity, the "Agent") to act as their agent for purposes of exercising any and all rights and remedies of the Purchasers under the Transaction Documents. Such appointment shall continue until revoked in writing by a Majority in Interest, at which time a Majority in Interest shall appoint a new Agent, provided that Broadfin Capital, LLC may not be removed as Agent unless Broadfin Healthcare Master Fund, Ltd., then holds less than $1,000,000 in principal amount of Debt Securities; provided, further, that such removal may occur only if the other Purchasers then hold, in the aggregate, not less than $1,000,000 in principal amount of Debt Securities. The Agent shall have the rights, responsibilities and immunities set forth in Annex A hereto. Each of the Purchasers (i) acknowledges that the Agent is acting as agent for the Purchasers holding Debentures as well as the Purchasers holding Notes, (ii) acknowledges that the interests of the Purchasers holding Debentures could be in conflict with the interests of the Purchasers holding Notes, (iii) waives any and all claims it may have at any time regarding any conflict of interest of the Agent, and (iv) releases the Agent from, and indemnifies and holds harmless the Agent against, any such liabilities.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

MELA SCIENCES, INC.

By: _____
Michael R. Stewart
Chief Executive Officer

Address for Notice:
MELA Sciences, Inc.
50 South Buckhout Street, Suite 1
Irvington, New York 10533
Fax: (914) 591-3701
Attention: Chief Executive Officer

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

Duane Morris LLP
30 South 17th Street
Philadelphia, Pennsylvania 19103-4196
Fax: (215) 689-4382
Attention: Kathleen M. Shay, Esq.

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SIGNATURE PAGES FOR PURCHASERS FOLLOWS]

[PURCHASER SIGNATURE PAGES TO MELA SECURITIES PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: _____

Signature of Authorized Signatory of Purchaser: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Email Address of Authorized Signatory: _____

Facsimile Number of Authorized Signatory: _____

Address for Notice to Purchaser:

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Subscription Amount:

Debentures: $_____

Notes: $_____

Warrant Shares:_____

EIN Number: _____

[SIGNATURE PAGES CONTINUE]

ANNEX A
to
SECURITIES PURCHASE AGREEMENT

THE AGENT

1. Appointment. The Purchasers (all capitalized terms used herein and not otherwise defined shall have the respective meanings provided in the Securities Purchase Agreement to which this Annex A is attached (the "Purchase Agreement")) hereby designate Sabby Management, LLC (in such capacity, the "Agent") as the Agent to act as specified herein and in the Transaction Documents. Each Purchaser hereby irrevocably authorizes the Agent to take such action on its behalf under the provisions of the Transaction Documents and to exercise such powers or rights and remedies and to perform such duties hereunder and thereunder as are specifically delegated to or required of the Agent by the terms thereof and such other powers as are reasonably incidental thereto. The Agent may perform any of its duties hereunder by or through its agents or employees.

2. Nature of Duties. The Agent shall have no duties or responsibilities except those expressly set forth in the Transaction Documents. Neither the Agent nor any of its partners, members, shareholders, officers, directors, employees or agents shall be liable for any action taken or omitted by it as such under the Transaction Documents or in connection therewith, be responsible for the consequence of any oversight or error of judgment or answerable for any loss, unless caused solely by its or their gross negligence or willful misconduct as determined by a final judgment (not subject to further appeal) of a court of competent jurisdiction. The duties of the Agent shall be mechanical and administrative in nature; the Agent shall not have by reason of the Transaction Documents a fiduciary relationship in respect of any Debtor or any Purchaser; and nothing in the Transaction Documents, expressed or implied, is intended to or shall be so construed as to impose upon the Agent any obligations in respect of the Transaction Documents except as expressly set forth therein.

3. Lack of Reliance on the Agent. Independently and without reliance upon the Agent, each Purchaser, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of the Company and its subsidiaries in connection with such Purchaser's investment in the Debtors, the creation and continuance of the Obligations, the transactions contemplated by the Transaction Documents, and the taking or not taking of any action in connection therewith, and (ii) its own appraisal of the creditworthiness of the Company and its subsidiaries, and of the value of the Collateral from time to time, and the Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Purchaser with any credit, market or other information with respect thereto, whether coming into its possession before any Obligations are incurred or at any time or times thereafter. The Agent shall not be responsible to the Debtors or any Purchaser for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith, or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of the Transaction Documents, or for the financial condition of the Debtors or the value of any of the Collateral, or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of the Transaction Documents, or the financial condition of the Debtors, or the value of any of the Collateral, or the existence or possible existence of any default or Event of Default under the Transaction Documents.

4. Certain Rights of the Agent. The Agent shall have the right to take any action and to exercise any rights and remedies with respect to the Collateral on behalf of any or all of the Purchasers. To the extent practical, the Agent may request instructions from the Purchasers with respect to any material act or action (including failure to act) in connection with the Transaction Documents, and shall be entitled to act or refrain from acting in accordance with the instructions of a Majority in Interest; if such instructions are not provided, the Agent shall be entitled to refrain from such act or taking such action, and if such action is taken, shall be entitled to appropriate indemnification from the Purchasers in respect of actions to be taken by the Agent; and the Agent shall not incur liability to any person or entity by reason of so refraining. Without limiting the foregoing, (a) no Purchaser shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting hereunder in accordance with the terms of the Transaction Documents, and the Debtors shall have no right to question or challenge the authority of, or any instructions given to, the Agent pursuant to the foregoing and (b) the Agent shall not be required to take any action which the Agent believes (is) could reasonably be expected to expose it to personal liability or (ii) is contrary to the Transaction Documents or applicable law.

5. Reliance. The Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, statement, certificate, e-mail or telecopy message, order or other document or telephone message signed, sent or made by the proper person or entity, and, with respect to all legal matters pertaining to the Transaction Documents and its duties thereunder, upon advice of counsel selected by it and upon all other matters pertaining to the Transaction Documents and its duties thereunder, upon advice of other experts selected by it. Anything to the contrary notwithstanding, the Agent shall have no obligation whatsoever to any Purchaser to assure that the Collateral exists or is owned by the Debtors or is cared for, protected or insured or that the liens granted pursuant to the Transaction Documents have been properly or sufficiently or lawfully created, perfected, or enforced or are entitled to any particular priority.

6. Indemnification. To the extent that the Agent is not reimbursed and indemnified by the Debtors, the Purchasers will jointly and severally reimburse and indemnify the Agent, in proportion to their principal amounts of Debt Securities then held, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Agent in performing its duties hereunder or under the Transaction Documents, or in any way relating to or arising out of the Transaction Documents except for those determined by a final judgment (not subject to further appeal) of a court of competent jurisdiction to have resulted solely from the Agent’s own gross negligence or willful misconduct. Prior to taking any action hereunder as Agent, the Agent may require each Purchaser to deposit with it sufficient sums as it determines in good faith is necessary to protect the Agent for costs and expenses associated with taking such action.

7. Resignation by the Agent.

(a) The Agent may resign from the performance of all its functions and duties under the Transaction Documents at any time by giving 30 days' prior written notice (as provided in the Purchase Agreement) to the Debtors and the Purchasers. Such resignation shall take effect upon the appointment of a successor Agent pursuant to clauses (b) and (c) below.

(b) Upon any such notice of resignation, the Purchasers, acting by a Majority in Interest, shall appoint a successor Agent hereunder.

(c) If a successor Agent shall not have been so appointed within said 30-day period, the Agent shall then appoint a successor Agent who shall serve as Agent until such time, if any, as the Purchasers appoint a successor Agent as provided above. If a successor Agent has not been appointed within such 30-day period, the Agent may petition any court of competent jurisdiction or may interplead the Debtors and the Purchasers in a proceeding for the appointment of a successor Agent, and all fees, including, but not limited to, extraordinary fees associated with the filing of interpleader and expenses associated therewith, shall be payable by the Debtors on demand.

8. Rights with respect to Collateral. Each Purchaser agrees with all other Purchasers and the Agent (i) that it shall not, and shall not attempt to, exercise any rights with respect to any security interest in the Collateral, whether pursuant to any other agreement or otherwise (other than the Transaction Documents), or take or institute any action against the Agent or any of the other Purchasers in respect of the Collateral or its rights hereunder (other than any such action arising from the breach of the Transaction Documents) and (ii) that such Purchaser has no other rights with respect to the Collateral other than as set forth in the Transaction Documents. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations under the Transaction Documents. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of the Transaction Documents including this Annex A shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent.

EXHIBIT 10.2

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of June 22, 2015, between MELA Sciences, Inc., a Delaware corporation (the "Company"), and each of the several purchasers signatory hereto (each such purchaser, a "Purchaser" and, collectively, the "Purchasers").

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and each Purchaser (the "Purchase Agreement").

The Company and each Purchaser hereby agrees as follows:

1. Definitions.

Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(d).

"Effectiveness Date" means, with respect to the Initial Registration Statement required to be filed hereunder, the 75th calendar day following the date hereof (or, in the event of a "full review" by the Commission, the 105th calendar day following the date hereof) and with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the 105th calendar day following the date on which an additional Registration Statement is required to be filed hereunder (or, in the event of a "full review" by the Commission, the 105th calendar day following the date such additional Registration Statement is required to be filed hereunder); provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

"Event" shall have the meaning set forth in Section 2(d).

"Event Date" shall have the meaning set forth in Section 2(d).

"Filing Date" means, with respect to the Initial Registration Statement required hereunder, the 30th calendar day following the date hereof and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

"Holder" or "Holders" means the holder or holders, as the case may be, from time to time of Registrable Securities.

"Indemnified Party" shall have the meaning set forth in Section 5(c).

"Indemnifying Party" shall have the meaning set forth in Section 5(c).

"Initial Registration Statement" means the initial Registration Statement filed pursuant to this Agreement.

"Losses" shall have the meaning set forth in Section 5(a).

"Plan of Distribution" shall have the meaning set forth in Section 2(a).

"Prospectus" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Registrable Securities" means, as of any date of determination, (a) all of the shares of Common Stock then issued and issuable upon conversion in full of the Debentures (assuming on such date the Debentures are converted in full without regard to any conversion limitations therein), (b) all Warrant Shares then issued and issuable upon exercise of the Warrants (assuming on such date the Warrants are exercised in full without regard to any exercise limitations therein) (c) all shares of Common Stock issued or issuable as payment of interest on the Debentures, and (d) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (b) such Registrable Securities have been previously sold in accordance with Rule 144, or (c) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the affected Holders (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company, and all Warrants are exercised by "cashless exercise" as provided in Section 2(c) of each of the Warrants), as reasonably determined by the Company, upon the advice of counsel to the Company.

"Registration Statement" means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

"Rule 415" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Selling Stockholder Questionnaire" shall have the meaning set forth in Section 3(a).

"SEC Guidance" means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.

2. Shelf Registration.

(a) On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of Registrable Securities, representing at least 135% of the sum of (i) shares of Common Stock that are issued or issuable upon conversion of the Debentures and (ii) Warrant Shares, that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Notwithstanding the foregoing sentence, the Company and the Major Investors shall cooperate with respect to the Initial Registration Statement as to the number of shares of Common Stock which shall be requested to be registered on such Initial Registration Statement in order to (1) avoid a limitation on the number of shares of Common Stock which may be registered on such Registration Statement due to Rule 415, (2) to avoid registration on such Registration Statement of shares of Common Stock which are not authorized by the Company's certificate of incorporation and (3) to conform to any Nasdaq limitations on the number of shares of Common Stock which may be registered on the Initial Registration Statement. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(e)) and shall contain (unless otherwise directed by at least a majority in interest of the Holders) substantially the "Plan of Distribution" attached hereto as Annex A. Subject to the terms of this Agreement, the Company shall use its best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as reasonably practical after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its best efforts to keep such Registration Statement continuously effective under the Securities Act until all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (the "Effectiveness Period"). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. Eastern Time on a Trading Day. The Company shall immediately notify the Holders via facsimile or by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. Eastern Time on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424. Failure to so notify the Holder within one (1) Trading Day of such notification of effectiveness or failure to file a final Prospectus as foresaid shall be deemed an Event under Section 2(d).

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, subject to the provisions of Section 2(e); with respect to filing on Form S-3 or other appropriate form, and subject to the provisions of Section 2(d) with respect to the payment of liquidated damages; provided, however, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement and subject to the payment of liquidated damages pursuant to Section 2(d), if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

a. First, the Company shall reduce or eliminate any securities to be included by any Person other than a Holder;

b. Second, the Company shall reduce Registrable Securities represented by Warrant Shares (applied, in the case that some Warrant Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Warrant Shares held by such Holders); and

c. Third, the Company shall reduce Registrable Securities represented by Conversion Shares (applied, in the case that some Conversion Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Conversion Shares held by such Holders).

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its best efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d) If: (i) the Initial Registration Statement is not filed on or prior to its Filing Date (if the Company files the Initial Registration Statement without affording the Holders the opportunity to review and comment on the same as required by Section 3(a) herein, the Company shall be deemed to have not satisfied this clause (i)), or (ii) the Company fails to file with the Commission a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the Commission pursuant to the Securities Act, within five Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be "reviewed" or will not be subject to further review, or (iii) prior to the effective date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within ten (10) Trading Days after the receipt of comments by or notice from the Commission that such amendment is required in order for such Registration Statement to be declared effective, or (iv) a Registration Statement registering for resale Registrable Securities equal to at least 135% of the sum of (1) the number of shares of Common Stock issued or issuable upon conversion of the Debentures and (2) the Warrant Shares is not declared effective by the Commission by the Effectiveness Date of the Initial Registration Statement, provided, that to the extent that the Major Investors consented (pursuant to the second sentence of Section 2(a)) to the Company registering less than all of the Registrable Securities required to be registed on the Initial Registration Statement, then the Company shall only be required to register such lesser amount of Registrable Securities on the Initial Registration Statement, or (v) after the effective date of a Registration Statement, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holders are otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days (which need not be consecutive calendar days) during any 12-month period (any such failure or breach being referred to as an "Event", and for purposes of clauses (i) and (iv), the date on which such Event occurs, and for purpose of clause (ii) the date on which such five (5) Trading Day period is exceeded, and for purpose of clause (iii) the date which such ten (10) calendar day period is exceeded, and for purpose of clause (v) the date on which such ten (10) or fifteen (15) calendar day period, as applicable, is exceeded being referred to as "Event Date"), then, in addition to any other rights the Holders may have hereunder or under applicable law, on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash, as partial liquidated damages and not as a penalty, equal to 2.0% of the aggregate purchase price paid by such Holder pursuant to the Purchase Agreement; provided, however, the Company shall not be liable for liquidated damages solely with respect to any Registrable Shares not registered solely as a result of the application of Rule 415 to the extent that the Company otherwise complies with the its obligations herein. The parties agree that the maximum aggregate liquidated damages payable to a Holder under this Agreement shall be 12% of the aggregate Subscription Amount paid by such Holder pursuant to the Purchase Agreement. If the Company fails to pay any partial liquidated damages pursuant to this Section in full within seven days after the date payable, the Company will pay interest thereon at a rate of 12% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Holder, accruing daily from the date such partial liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The partial liquidated damages pursuant to the terms hereof shall apply on a daily pro rata basis for any portion of a month prior to the cure of an Event.

(e) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference, but not including (i) any Exchange Act filing or (ii) any supplement or post-effective amendment to a registration statement that is not related to such Holder's Registrable Securities), the Company shall (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. Notwithstanding the above, the Company shall not be obligated to provide the Holders advance copies of any universal shelf registration statement registering securities in addition to those required hereunder, or any Prospectus prepared thereto. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex B (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4^{th}) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective (subject to any requirement that a post-effective amendment be declared effective by the Commission) as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities subject to any SEC Guidance that sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information contained therein which would constitute material non-public information as to any Holder which has not executed a confidentiality agreement with respect thereto with the Company regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.

(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed (but not including (i) any Exchange Act filing or (ii) any supplement or post-effective amendment to a registration statement that is not related to such Holder's Registrable Securities), (B) when the Commission notifies the Company whether there will be a "review" of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus, provided, however, in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e) Use its reasonable best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) Furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission; provided, that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) The Company shall cooperate with any broker-dealer through which a Holder proposes to resell its Registrable Securities in effecting a filing with the FINRA Corporate Financing Department pursuant to FINRA Rule 5110, as requested by any such Holder, and the Company shall pay the filing fee required by such filing within two (2) Business Days of request therefor.

(i) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement; provided, that, the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(j) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request.

(k) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(k) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to Section 2(d), for a period not to exceed 60 calendar days (which need not be consecutive days) in any 12-month period.

(l) Comply with all applicable rules and regulations of the Commission in connection with obtaining and maintaining the effectiveness of any Registration Statement required to be filed and maintained with the Commission hereunder.

(m) The Company shall use its reasonable best efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities.

(n) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to such Holder only, until such information is delivered to the Company.

4. Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, (vi) legal fees and expenses of counsel for Broadfin and Sabby, and (vii) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or, except to the extent provided for in the Transaction Documents or other costs of the Holders.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(d), but only if and to the extent that following the receipt of the Advice the misstatement or omission giving rise to such Loss would have been corrected. The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with Section 6(h).

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: (x) such Holder's failure to comply with any applicable prospectus delivery requirements of the Securities Act through no fault of the Company or (y) any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto or (iii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), to the extent, but only to the extent, related to the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(d), but only if and to the extent that following the receipt of the Advice the misstatement or omission giving rise to such Loss would have been corrected. In no event shall the liability of any selling Holder under this Section 5(b) be greater in amount than the dollar amount of the net proceeds received by such Holder upon the sale of the Registrable Securities giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that, the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party; provided, that, the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. Notwithstanding the provisions of this Section 5(d), no Holder shall be required to contribute pursuant to this Section 5(d), in the aggregate, any amount in excess of the amount by which the net proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations; Prohibition on Filing Other Registration Statements. Except as set forth on Schedule 6(b) attached hereto, neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in any Registration Statements other than the Registrable Securities. The Company shall not file any other registration statements until all Registrable Securities are registered pursuant to a Registration Statement that is declared effective by the Commission, provided that this Section 6(b) shall not prohibit the Company from filing supplements or amendments to registration statements filed prior to the date of this Agreement or from filing any registration statements on Form S-8.

(c) Compliance. Each Holder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it (unless an exemption therefrom is available) in connection with sales of Registrable Securities pursuant to a Registration Statement.

(d) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(d).

(e) Piggy-Back Registrations. If, at any time during the Effectiveness Period, there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans, then the Company shall deliver to each Holder a written notice of such determination and, if within fifteen days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered; provided, however, that the Company shall not be required to register any Registrable Securities pursuant to this Section 6(e) that are eligible for resale pursuant to Rule 144 (without volume restrictions or current public information requirements) promulgated by the Commission pursuant to the Securities Act or that are the subject of a then effective Registration Statement.

(f) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of a majority or more of the then outstanding Registrable Securities (for purposes of clarification, this includes any Registrable Securities issuable upon exercise or conversion of any Security); provided, however, unanimous consent shall be required for any amendment that would adversely affect any Holder. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(f). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(g) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(h) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under Section 5.7 of the Purchase Agreement.

(i) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth on Schedule 6(i), neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(j) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

(k) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

(l) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(m) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(n) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(o) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not asset any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

****

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

MELA SCIENCES, INC.

By: _____
Name:
Title:

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

[SIGNATURE PAGE OF HOLDERS TO MELA RRA]

Name of Holder: _____

Signature of Authorized Signatory of Holder: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

[SIGNATURE PAGES CONTINUE]

Schedule 6(i)

1. Registration Rights Agreement, dated as of February 5, 2014, by and among MELA Sciences, Inc. and the purchasers identified on the signature pages thereto

2. Registration Rights Agreement, dated as of July 21, 2014, by and among MELA Sciences, Inc. and the purchasers identified on the signature pages thereto

Annex A

Plan of Distribution

Each Selling Stockholder (the "Selling Stockholders") of the securities and any of their pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the Nasdaq Stock Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholders may also sell securities under Rule 144 under the Securities Act of 1933, as amended (the "Securities Act"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholders may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholders (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

In connection with the sale of the securities or interests therein, the Selling Stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The Selling Stockholders may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The Selling Stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholders and any broker-dealers or agents that are involved in selling the securities may be deemed to be "underwriters" within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. Each Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities. In no event shall any broker-dealer receive fees, commissions and markups which, in the aggregate, would exceed eight percent (8%).

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholders against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

Because Selling Stockholders may be deemed to be "underwriters" within the meaning of the Securities Act, they will be subject to the prospectus delivery requirements of the Securities Act including Rule 172 thereunder. In addition, any securities covered by this prospectus which qualify for sale pursuant to Rule 144 under the Securities Act may be sold under Rule 144 rather than under this prospectus. The Selling Stockholders have advised us that there is no underwriter or coordinating broker acting in connection with the proposed sale of the resale securities by the Selling Stockholders.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

Annex B

MELA SCIENCES, INC.

Selling Stockholder Notice and Questionnaire

The undersigned beneficial owner of common stock (the "Registrable Securities") of MELA Sciences, Inc., a Delaware corporation (the "Company"), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "Commission") a registration statement (the "Registration Statement") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the "Registration Rights Agreement") to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

NOTICE

The undersigned beneficial owner (the "Selling Stockholder") of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

QUESTIONNAIRE

1. Name.

(a) Full Legal Name of Selling Stockholder

_____

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

_____

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

_____

2. Address for Notices to Selling Stockholder:

_____

_____

_____

Telephone: _____

Fax: _____

Contact Person: _____

3. Broker-Dealer Status:

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes ☐ No ☐

Note: If "no" to Section 3(b), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

_____

(c) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If "no" to Section 3(d), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.

Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

_____

_____

5. Relationships with the Company:

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here:

_____

_____

The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date: _____

Beneficial Owner: _____

By: _____
Name:
Title:

PLEASE FAX A COPY (OR EMAIL A .PDF COPY) OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE, AND RETURN THE ORIGINAL BY OVERNIGHT MAIL, TO:

EXHIBIT 10.3

SECURITY AGREEMENT

This SECURITY AGREEMENT, dated as of June 22, 2015 (this "Agreement"), is among MELA Sciences, Inc., a Delaware corporation (the "Company"), any Additional Debtors (as such term is defined herein and, together with the Company, the "Debtors"), and Broadfin Capital, LLC, as agent (the "Agent") for the holders (collectively, the "Purchasers") of the Debt Securities (as defined in the Purchase Agreement (as defined below)).

WITNESSETH:

WHEREAS, pursuant to that certain Securities Purchase Agreement dated June 22, 2015 (the "Purchase Agreement") the Purchasers have severally agreed to extend the loans to the Company evidenced by the Company's 2.25% Senior Secured Convertible Debentures due June 22, 2015 (the "Debentures") and by the Notes (as defined in the Purchase Agreement and, the Notes together with the Debentures, the "Debt Securities"); and

WHEREAS, in order to induce the Purchasers to extend the loans evidenced by the Debt Securities, each Debtor has agreed to execute and deliver this Agreement and to grant the Agent, for the ratable benefit of the Purchasers, a security interest in certain property of such Debtor to secure the prompt payment, performance and discharge in full of all of the Company's obligations under the Debt Securities and the obligations of any Additional Debtors under the Guarantee.

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

1. **Certain Definitions**. As used in this Agreement, the following terms shall have the meanings set forth in this Section 1. Terms used but not otherwise defined in this Agreement that are defined in Article 9 of the UCC (such as "account", "chattel paper", "commercial tort claim", "deposit account", "document", "equipment", "fixtures", "general intangibles", "goods", "instruments", "inventory", "investment property", "letter-of-credit rights", "proceeds" and "supporting obligations") shall have the respective meanings given such terms in Article 9 of the UCC.

(a) "Collateral" means the collateral in which the Agent is granted a security interest by this Agreement and includes the following personal property of the Debtors, whether presently owned or existing or hereafter acquired or coming into existence, wherever situated, and all additions and accessions thereto and all substitutions and replacements thereof, and all proceeds, products and accounts thereof, including, without limitation, all proceeds from the sale or transfer of the Collateral and of insurance covering the same and of any tort claims in connection therewith, and all dividends, interest, cash, notes, securities, equity interest or other property at any time and from time to time acquired, receivable or otherwise distributed in respect of, or in exchange for, any or all of the Pledged Securities (as defined below):

(i) All goods, including, without limitation, (A) all machinery, equipment, computers, motor vehicles, trucks, tanks, boats, ships, appliances, furniture, special and general tools, fixtures, test and quality control devices and other equipment of every kind and nature and wherever situated, together with all documents of title and documents representing the same, all additions and accessions thereto, replacements therefor, all parts therefor, and all substitutes for any of the foregoing and all other items used and useful in connection with any Debtor's businesses and all improvements thereto; and (B) all inventory;

(ii) All contract rights and other general intangibles, including, without limitation, all partnership interests, membership interests, stock or other securities, other than Excluded Property, rights under any of the Organizational Documents, agreements related to the Pledged Securities, licenses, distribution and other agreements, computer software (whether "off-the-shelf", licensed from any third party or developed by any Debtor), computer software development rights, leases, franchises, customer lists, quality control procedures, grants and rights, goodwill, Intellectual Property and income tax refunds;

(iii) All accounts, together with all instruments, all documents of title representing any of the foregoing, all rights in any merchandising, goods, equipment, motor vehicles and trucks which any of the same may represent, and all right, title, security and guaranties with respect to each account, including any right of stoppage in transit;

(iv) All documents, letter-of-credit rights, instruments and chattel paper;

(v) All commercial tort claims;

(vi) All deposit accounts and all cash (whether or not deposited in such deposit accounts);

(vii) All investment property and all ownership and/or other equity interests in each Subsidiary, including, without limitation, the Subsidiary Equity Interests, and, in each case, all certificates representing such shares and/or equity interests and, in each case, all rights, options, warrants, stock, other securities and/or equity interests that may hereafter be received, receivable or distributed in respect of, or exchanged for, any of the foregoing and all rights arising thereunder or in connection therewith, including, but not limited to, all dividends, interest and cash, other than Excluded Property (collectively, the "Pledged Securities");

(viii) All supporting obligations; and

(ix) All files, records, books of account, business papers, and computer programs; and

(x) the products and proceeds of all of the foregoing.

Notwithstanding the foregoing, (A) nothing herein shall be deemed to constitute the grant of a security interest in, or an assignment of, any asset (i) in which a security interest or assignment is void by operation of applicable law, or is otherwise prohibited by applicable law (in each case to the extent that such applicable law is not overridden by Sections 9-406, 9-407 and/or 9-408 of the UCC or other similar applicable law), or (ii) subject to any governmental permit, approval or license not related to Intellectual Property, if and to the extent that a security interest therein, or assignment thereof, is prohibited by or in violation of (x) any applicable law, or (y) a term, provision or condition of any such governmental permit, approval or license (unless in each case, such applicable law, term, provision or condition would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC); provided, however, that to the extent permitted by applicable law, this Agreement shall create a valid security interest in such asset and, to the extent permitted by applicable law, this Agreement shall create a valid security interest in the proceeds of such asset and (B) the Collateral does not include any Excluded Property.

(b) "Event of Default" has the meaning ascribed to such term in the Debentures.

(c) "Excluded Property" means 35% of the equity interests in any Subsidiary organized in a jurisdiction outside of the United States.

(d) "Intellectual Property" means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, (i) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, (ii) all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof, and all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, (iii) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade dress, service marks, logos, domain names and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common law rights related thereto, (iv) all trade secrets arising under the laws of the United States, any other country or any political subdivision thereof, (v) all rights to obtain any reissues, renewals or extensions of the foregoing, (vi) all licenses for any of the foregoing, and (vii) all causes of action for infringement of the foregoing.

(e) "Liens" has the meaning ascribed to such term in the Purchase Agreement.

(f) "Majority in Interest" means, at any time of determination, the majority in interest (based on then-outstanding principal amounts of Debt Securities at the time of such determination) of the Purchasers.

(g) "Necessary Endorsement" means undated stock powers endorsed in blank or other proper instruments of assignment duly executed and such other instruments or documents as the Agent may reasonably request.

(h) "Obligations" means all of the liabilities and obligations (primary, secondary, direct, contingent, sole, joint or several) due or to become due, or that are now or may be hereafter contracted or acquired, or owing to, of any Debtor to the Purchasers, under this Agreement, the Debt Securities, the Subsidiary Guarantee (to be entered into pursuant to the terms of the Purchase Agreement by any Additional Debtors) (the "Guarantee") and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith, in each case, whether now or hereafter existing, voluntary or involuntary, direct or indirect, absolute or contingent, liquidated or unliquidated, whether or not jointly owed with others, and whether or not from time to time decreased or extinguished and later increased, created or incurred, and all or any portion of such obligations or liabilities that are paid, to the extent all or any part of such payment is avoided or recovered directly or indirectly from any of the Purchasers as a preference, fraudulent transfer or otherwise as such obligations may be amended, supplemented, converted, extended or modified from time to time. Without limiting the generality of the foregoing, the term "Obligations" shall include, without limitation: (i) principal of, and interest on the Debt Securities and the loans extended pursuant thereto; (ii) any and all other fees, indemnities, costs, obligations and liabilities of the Debtors from time to time under or in connection with this Agreement, the Debt Securities, the Guarantee and any other instruments, agreements or other documents executed and/or delivered in connection herewith or therewith; and (iii) all amounts (including but not limited to post-petition interest) in respect of the foregoing that would be payable but for the fact that the obligations to pay such amounts are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any Debtor.

(i) "Organizational Documents" means with respect to any Debtor, the documents by which such Debtor was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Debtor (such as bylaws, a partnership agreement or an operating, limited liability or members agreement).

(j) "Permitted Liens" has the meaning ascribed to such term in the Debentures.

(k) "Pledged Interests" has the meaning ascribed to such term in Section 4(j).

(l) "Pledged Securities" has the meaning ascribed to such term in Section 1(a).

(m) "UCC" means the Uniform Commercial Code of the State of New York and or any other applicable law of any state or states which has jurisdiction with respect to all, or any portion of, the Collateral or this Agreement, from time to time.

2. **Grant of Security Interest in Collateral**. As an inducement for the Purchasers to extend the loans evidenced by the Debt Securities and to secure the complete and timely payment, performance and discharge in full, as the case may be, of all of the Obligations, each Debtor hereby unconditionally and irrevocably pledges, grants and hypothecates to the Agent, for the ratable benefit of the Purchasers, a security interest in and to, a lien upon and a right of set-off against all of their respective right, title and interest of whatsoever kind and nature in and to, the Collateral (a "Security Interest" and, collectively, the "Security Interests").

3. **Delivery of Certain Collateral**. Contemporaneously or prior to the execution of this Agreement, each Debtor shall deliver or cause to be delivered to the Agent any and all certificates and other instruments or documents representing any of the Collateral, together with all Necessary Endorsements. If and when the Collateral includes Pledged Securities, each Debtor shall deliver or cause to be delivered to the Agent any and all certificates and other instruments representing or evidencing such Pledged Securities, together with all Necessary Endorsements and each Organizational Document governing such Pledged Securities.

4. **Representations, Warranties, Covenants and Agreements of the Debtors**. Except as set forth under the corresponding section of the disclosure schedules delivered to the Agent concurrently herewith (the "Disclosure Schedules"), which Disclosure Schedules shall be deemed a part hereof, each Debtor represents and warrants to, and covenants and agrees with, the Agent and the Purchasers as follows:

(a) Each Debtor has the requisite corporate, partnership, limited liability company or other entity power and authority to enter into this Agreement and otherwise to carry out its obligations hereunder. The execution, delivery and performance by each Debtor of this Agreement and the filings contemplated herein have been duly authorized by all necessary action on the part of such Debtor and no further action is required by such Debtor. This Agreement has been duly executed by each Debtor. This Agreement constitutes the legal, valid and binding obligation of each Debtor, enforceable against each Debtor in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization and similar laws of general application relating to or affecting the rights and remedies of creditors and by general principles of equity.

(b) The Debtors have no place of business or offices where their respective books of account and records are kept (other than temporarily at the offices of its attorneys or accountants) or places where Collateral is stored or located, except as set forth on Schedule 4.(b) attached hereto. Except as disclosed on Schedule 4.(b), (i) no Debtor owns any real property and (ii) none of the Collateral is in the possession of any consignee, bailee, warehouseman, agent or processor.

(c) Except for Permitted Liens, each of the Debtors is the sole owner of the Collateral it purports to own (except for non-exclusive licenses granted by any Debtor in the ordinary course of business), free and clear of any Liens and is fully authorized to grant the Security Interests. Except as set forth on Schedule 4.(c) attached hereto, there is not on file in any governmental or regulatory authority, agency or recording office an effective financing statement, security agreement, license or transfer or any notice of any of the foregoing (other than those that will be filed in favor of the Agent pursuant to this Agreement) covering or affecting any of the Collateral. Except as set forth on Schedule 4.(c) attached hereto and except pursuant to this Agreement, as long as this Agreement shall be in effect, the Debtors shall not execute and shall not knowingly permit to be on file in any such office or agency any other financing statement or other document or instrument (except to the extent filed or recorded in favor of the Agent pursuant to the terms of this Agreement).

(d) No written claim has been received that any material portion of Collateral or any Debtor's use of any material portion of Collateral violates the rights of any third party. There has been no adverse decision to any Debtor's claim of ownership rights in or exclusive rights to use the Collateral in any jurisdiction or to any Debtor's right to keep and maintain such Collateral in full force and effect, and there is no legal proceeding involving said rights pending or, to the best knowledge of any Debtor, threatened in writing before any court, judicial body, administrative or regulatory agency, arbitrator or other governmental authority.

(e) Each Debtor shall at all times maintain its books of account and records relating to the Collateral at its principal place of business and its Collateral at the locations set forth on Schedule 4.(b) attached hereto and may not relocate such books of account and records or tangible Collateral unless it delivers to the Agent at least 10 days prior to such relocation (i) written notice of such relocation and the new location thereof (which must be within the United States) and (ii) evidence that appropriate financing statements under the UCC and other necessary documents have been filed and recorded and other steps have been taken to perfect the Security Interests to create in favor of the Agent, for the ratable benefit of the Purchasers, a valid, perfected and continuing perfected first priority lien in the Collateral, subject to Permitted Liens.

(f) This Agreement creates in favor of the Agent, for the ratable benefit of the Purchasers, a valid security interest in the Collateral located in the United States, subject only to Permitted Liens, securing the payment and performance of the Obligations. Upon making the filings described in this Agreement, all security interests created hereunder in any Collateral located in the United States which may be perfected by filing Uniform Commercial Code financing statements will have been duly perfected. Except for the filing of the Uniform Commercial Code financing statements referred to in the immediately following paragraph, the recordation of the Intellectual Property Security Agreement (as defined in Section 4(p) hereof) with respect to copyrights and copyright applications in the United States Copyright Office referred to in paragraph (m), the execution and delivery of deposit account control agreements satisfying the requirements of Section 9-104(a)(2) of the UCC with respect to each deposit account of the Debtors, and the delivery of the certificates and other instruments provided in Section 3, no action is necessary to create, perfect or protect the security interests created hereunder in Collateral located in the United States. Without limiting the generality of the foregoing, except for the filing of said financing statements, the recordation of said Intellectual Property Security Agreement and the execution and delivery of said deposit account control agreements, no consent of any third parties and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for (i) the execution, delivery and performance of this Agreement, (ii) the creation or perfection of the Security Interests created hereunder in the Collateral located in the United States or (iii) the enforcement of the rights of the Agent and the Purchasers hereunder, other than consents from holders of Permitted Liens obtained in writing and delivered to the Agent prior to the date of this Agreement.

(g) Each Debtor hereby authorizes the Agent to file one or more financing statements under the UCC, with respect to the Security Interests, with the proper filing and recording agencies in any jurisdiction deemed proper by it.

(h) The execution, delivery and performance of this Agreement by the Debtors does not (i) violate any of the provisions of any Organizational Documents of any Debtor or any judgment, decree, order or award of any court, governmental body or arbitrator or any applicable law, rule or regulation applicable to any Debtor or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any material agreement, or credit facility, to which any Debtor is a party or by which any property or asset of any Debtor is bound or affected. If any, all required consents (including, without limitation, from stockholders or creditors of any Debtor) necessary for any Debtor to enter into and perform its obligations hereunder have been obtained.

(i) The capital stock and other equity interests listed on Schedule 4.(i) hereto (the "Subsidiary Equity Interests") represent all of the capital stock and other equity interests of the Subsidiaries, and represent all capital stock and other equity interests owned, directly or indirectly, by the Debtors. All of the Subsidiary Equity Interests are validly issued, fully paid and nonassessable. Each Debtor that is indicated on Schedule 4.(i) to be the owner of Subsidiary Equity Interests is the legal and beneficial owner of such Subsidiary Equity Interests, free and clear of any lien, security interest or other encumbrance except for the security interests created by this Agreement and other Permitted Liens.

(j) The ownership and other equity interests in partnerships and limited liability companies (if any) included in the Collateral (the "Pledged Interests") by their express terms do not provide that they are securities governed by Article 8 of the UCC and are not held in a securities account or by any financial intermediary.

(k) Except for Permitted Liens, each Debtor shall at all times maintain the liens and Security Interests provided for hereunder as valid and perfected first priority liens and security interests in the Collateral located in the United States in favor of the Agent until this Agreement and the Security Interest hereunder shall be terminated pursuant to Section 14 hereof. Each Debtor hereby agrees to defend the same against the claims of any and all persons and entities. Each Debtor shall safeguard and protect all Collateral for the account of the Agent. At the request of the Agent, each Debtor will authorize the Agent at any time or from time to time as reasonably necessary one or more financing statements pursuant to the UCC in form reasonably satisfactory to the Agent and will pay the cost of filing the same in all public offices wherever filing is, or is deemed by the Agent to be, necessary to effect the rights and obligations provided for herein. Without limiting the generality of the foregoing, each Debtor shall pay all fees, taxes and other amounts necessary to maintain the Collateral and the Security Interests hereunder, and each Debtor shall obtain and furnish to the Agent from time to time, upon reasonable request, such releases and/or subordinations of claims and liens which may be required to maintain the priority of the Security Interests hereunder.

(l) No Debtor will transfer, pledge, hypothecate, encumber, license, sell or otherwise dispose of any of the Collateral (except for non-exclusive licenses granted by a Debtor in its ordinary course of business, sales of inventory by a Debtor in its ordinary course of business and other Collateral which is no longer useful or material to a Debtor's business) without the prior written consent of a Majority in Interest.

(m) Each Debtor shall keep and preserve its equipment, inventory and other tangible Collateral in good condition, repair and order, subject to ordinary wear and tear, and shall not operate or locate any such Collateral (or cause to be operated or located) in any area excluded from insurance coverage.

(n) Each Debtor shall maintain with financially sound and reputable insurers, insurance with respect to the Collateral, including Collateral hereafter acquired, against loss or damage of the kinds and in the amounts customarily insured against by entities of established reputation having similar properties similarly situated and in such amounts as are customarily carried under similar circumstances by other such entities and otherwise as is prudent for entities engaged in similar businesses but in any event sufficient to cover the full replacement cost thereof. Each Debtor shall cause each insurance policy issued in connection herewith to provide, and the insurer issuing such policy to certify to the Agent, that (a) the Agent will be named as lender loss payee and additional insured under each such insurance policy; (b) if such insurance be proposed to be cancelled or materially changed for any reason whatsoever, such insurer will promptly notify the Agent and such cancellation or material change shall not be effective as to the Agent for at least thirty (30) days after receipt by the Agent of such notice, unless the effect of such change is to extend or increase coverage under the policy; and (c) the Agent will have the right (but no obligation) at its election to remedy any default in the payment of premiums within thirty (30) days of notice from the insurer of such default. If no Event of Default exists and if the aggregate insurance policy proceeds arising out of any claim or series of related claims do not exceed $100,000, loss payments in each instance will be applied by the Debtors to the repair and/or replacement of property with respect to which the loss was incurred to the extent reasonably feasible, and any loss payments or the balance thereof remaining, to the extent not so applied, shall be payable to the Debtors; provided, however, that payments received by the Debtors after an Event of Default occurs and is continuing or in excess of $100,000 for any occurrence or series of related occurrences shall be paid to the Agent and, if received by the Debtors, shall be held in trust for the Purchasers and immediately paid over to the Agent unless otherwise directed in writing by the Agent. Copies of such policies or the related certificates, in each case, naming the Agent as lender loss payee and additional insured shall be delivered to the Agent at least annually and at the time any new policy of insurance is issued.

(o) Each Debtor shall, within ten (10) days of obtaining knowledge thereof, advise the Agent promptly, in sufficient detail, of any material adverse change in the Collateral as a whole, and of the occurrence of any event which would have a material adverse effect on the value of the Collateral as a whole or on the Agent's security interest therein.

(p) Each Debtor shall promptly execute and deliver to the Agent such further deeds, mortgages, assignments, security agreements, financing statements or other instruments, documents, certificates and assurances and take such further action as the Agent may from time to time reasonably request to perfect, protect or enforce the Agent's security interest in the Collateral including, without limitation, if applicable, the execution and delivery of a separate security agreement with respect to each Debtor's Intellectual Property ("Intellectual Property Security Agreement") in which the Agent has been granted a security interest hereunder, substantially in a form reasonably acceptable to the Agent, which Intellectual Property Security Agreement, other than as stated therein, shall be subject to all of the terms and conditions hereof.

(q) Each Debtor shall permit the Agent and its representatives and agents to inspect the Collateral during normal business hours and upon at least two (2) Business Day's prior notice, and to make copies of records pertaining to the Collateral as may be reasonably requested by the Agent from time to time.

(r) Each Debtor shall take all steps reasonably necessary to diligently pursue and seek to preserve, enforce and collect any rights, claims, causes of action and accounts receivable in respect of the Collateral.

(s) Each Debtor shall promptly notify the Agent in sufficient detail upon becoming aware of any attachment, garnishment, execution or other legal process levied against any Collateral and of any other information received by such Debtor that may reasonably be expected to materially and adversely affect the value of the Collateral as a whole, the Security Interest or the rights and remedies of the Agent and the Purchasers hereunder.

(t) All information heretofore, herein or hereafter supplied to the Agent or the Purchasers by or on behalf of any Debtor with respect to the Collateral is accurate and complete in all material respects as of the date furnished.

(u) The Debtors shall at all times preserve and keep in full force and effect their respective valid existence and good standing and any rights and franchises material to its business.

(v) No Debtor will change its name, type of organization, jurisdiction of organization, organizational identification number (if it has one), legal or corporate structure, or identity, unless it provides at least 10 days prior written notice to the Agent of such change and, at the time of such written notification, such Debtor provides any financing statements or fixture filing necessary to perfect and continue the perfection of the Security Interests granted and evidenced by this Agreement.

(w) Except in the ordinary course of business, no Debtor will consign any of its inventory or sell any of its inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale without the consent of the Agent, which consent shall not be unreasonably withheld.

(x) No Debtor will relocate its chief executive office to a new location without (i) providing 30 days prior written notification thereof to the Agent and (ii) providing any financing statements or fixture filings necessary to perfect and continue the perfection of the Security Interests granted and evidenced by this Agreement.

(y) Each Debtor was organized and remains organized solely under the laws of the state set forth next to such Debtor's name in Schedule 4.(y) attached hereto, which Schedule 4.(y) sets forth each Debtor's organizational identification number or, if any Debtor does not have one, states that one does not exist.

(z) (i) The actual name of each Debtor is the name set forth in Schedule 4.(y) attached hereto; (ii) no Debtor has any trade names except as set forth on Schedule 4.(z) attached hereto; (iii) no Debtor has used any name other than that stated in the preamble hereto or as set forth on Schedule 4.(z) for the preceding five years; and (iv) no entity has merged into any Debtor or been acquired by any Debtor within the past five years except as set forth on Schedule 4.(z).

(aa) At any time and from time to time that any Collateral consists of instruments, certificated securities or other items that require or permit possession by the secured party to perfect the security interest created hereby, the applicable Debtor shall deliver such Collateral to the Agent.

(bb) Each Debtor, in its capacity as issuer, shall comply with any and all orders and instructions of Agent regarding the Pledged Interests consistent with the terms of this Agreement without the further consent of any Debtor as contemplated by Section 8-106 (or any successor section) of the UCC. Further, no Debtor shall enter into any agreement with any person or entity other than Agent that would confer "control", within the meaning of Article 8 of the UCC, of any Pledged Interests.

(cc) Each Debtor shall cause all tangible chattel paper constituting Collateral to be delivered to the Agent, or, if such delivery is not possible, then to cause such tangible chattel paper to contain a legend noting that it is subject to the security interest created by this Agreement. To the extent that any Collateral consists of electronic chattel paper, the applicable Debtor shall cause the underlying chattel paper to be "marked" within the meaning of Section 9-105 of the UCC (or successor section thereto).

(dd) If there is any investment property or deposit account included as Collateral that (i) can be perfected by "control" through an account control agreement, and (ii) at any time has a balance (in either cash or value of investment property, or both) exceeding $25,000, the applicable Debtor shall cause such an account control agreement, in form and substance in each case satisfactory to the Agent, to be entered into and delivered to the Agent for the ratable benefit of the Purchasers, unless the Major Investors waive the foregoing requirement with respect to any such investment property or deposit account otherwise constituting Collateral; provided, that (x) as of the date of this Agreement, Debtor is not required to provide an account control agreement over the account maintained by Debtor with J.P. Morgan in Germany as of the date of this Agreement (the "Germany Account"), (y) Debtor shall notify the Agent at any time that the Germany Account has a balance (in either cash or value of investment property, or both) exceeding $1,000,000 (a "Germany Account Notice"), and (z) Debtor shall cause an account control agreement, in form and substance satisfactory to the Agent, to be entered into and delivered to the Agent for the ratable benefit of the Purchasers in respect of the Germany Account upon instructions from the Agent to do so given by the Agent to Debtor at any time after Debtor is obligated to deliver a Germany Account Notice pursuant to the preceding clause (y).

(ee) To the extent that any Collateral consists of letter-of-credit rights, the applicable Debtor shall cause the issuer of each underlying letter of credit to consent to an assignment of the proceeds thereof to the Agent, for the ratable benefit of the Purchasers.

(ff) To the extent that any Collateral is in the possession of any third party, the applicable Debtor shall join with the Agent in notifying such third party of the Agent's security interest in such Collateral and shall use commercially reasonable efforts to obtain an acknowledgement and agreement from such third party with respect to the Collateral, in form and substance reasonably satisfactory to the Agent.

(gg) If any Debtor shall at any time hold or acquire a commercial tort claim, such Debtor shall promptly notify the Agent in a writing signed by such Debtor of the particulars thereof and grant to the Agent, for the ratable benefit of the Purchasers, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Agent.

(hh) Each Debtor shall immediately provide written notice to the Agent of any and all accounts which arise out of contracts with any governmental authority and, to the extent necessary to perfect or continue the perfected status of the Security Interests in such accounts and proceeds thereof, shall execute and deliver to the Agent an assignment of claims for such accounts and cooperate with the Agent in taking any other steps required, in its judgment, under the Federal Assignment of Claims Act or any similar federal, state or local statute or rule to perfect or continue the perfected status of the Security Interests in such accounts and proceeds thereof.

(ii) Each Debtor shall cause each wholly-owned Subsidiary that is organized in a jurisdiction within the United States to promptly become a party hereto (an "Additional Debtor"), by executing and delivering an Additional Debtor Joinder in substantially the form of Annex A attached hereto and comply with the provisions hereof applicable to the Debtors. Concurrent therewith, the Additional Debtor shall deliver replacement schedules for, or supplements to all other Schedules to (or referred to in) this Agreement, as applicable, which replacement schedules shall supersede, or supplements shall modify, the Schedules then in effect. The Additional Debtor shall also deliver such opinions of counsel, authorizing resolutions, good standing certificates, incumbency certificates, organizational documents, financing statements and other information and documentation as the Agent may reasonably request. Upon delivery of the foregoing to the Agent, the Additional Debtor shall be and become a party to this Agreement with the same rights and obligations as the Debtors, for all purposes hereof as fully and to the same extent as if it were an original signatory hereto and shall be deemed to have made the representations, warranties and covenants set forth herein as of the date of execution and delivery of such Additional Debtor Joinder, and all references herein to the "Debtors" shall be deemed to include each Additional Debtor.

(jj) Each Debtor shall vote the Pledged Securities to comply with the covenants and agreements set forth herein and in the Debt Securities.

(kk) Each Debtor shall register the pledge of the applicable Pledged Securities on the books of such Debtor. Each Debtor shall notify each issuer of Pledged Securities to register the pledge of the applicable Pledged Securities in the name of the Agent on the books of such issuer. Further, except with respect to certificated securities delivered to the Agent, the applicable Debtor shall deliver to Agent an acknowledgement of pledge (which, where appropriate, shall comply with the requirements of the relevant UCC with respect to perfection by registration) signed by the issuer of the applicable Pledged Securities, which acknowledgement shall confirm that: (a) it has registered the pledge on its books and records; and (b) at any time directed by Agent during the continuation of an Event of Default, such issuer will transfer the record ownership of such Pledged Securities into the name of any designee of Agent, will take such steps as may be necessary to effect the transfer, and will comply with all other instructions of Agent regarding such Pledged Securities without the further consent of the applicable Debtor.

(ll) In the event that, upon an occurrence of an Event of Default, Agent shall sell all or any of the Pledged Securities to another party or parties (herein called the "Transferee") or shall purchase or retain all or any of the Pledged Securities, each Debtor shall, to the extent applicable: (i) deliver to Agent or the Transferee, as the case may be, the articles of incorporation, bylaws, minute books, stock certificate books, corporate seals, deeds, leases, indentures, agreements, evidences of indebtedness, books of account, financial records and all other Organizational Documents and records of the Debtors and their direct and indirect subsidiaries; (ii) use its best efforts to obtain resignations of the persons then serving as officers and directors of the Debtors and their direct and indirect subsidiaries, if so requested; and (iii) use its best efforts to obtain any approvals that are required by any governmental or regulatory body in order to permit the sale of the Pledged Securities to the Transferee or the purchase or retention of the Pledged Securities by Agent and allow the Transferee or Agent to continue the business of the Debtors and their direct and indirect subsidiaries.

(mm) Without limiting the generality of the other obligations of the Debtors hereunder, each Debtor shall promptly (i) cause to be registered at the United States Copyright Office all of its material copyrights, (ii) cause the security interest contemplated hereby with respect to all Intellectual Property registered at the United States Copyright Office or United States Patent and Trademark Office to be duly recorded at the applicable office, and (iii) give the Agent notice whenever it acquires (whether absolutely or by license) or creates any additional material Intellectual Property on a quarterly basis.

(nn) Each Debtor will from time to time, at the joint and several expense of the Debtors, promptly execute and deliver all such further instruments and documents, and take all such further action as the Agent may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable the Agent and the Purchasers to exercise and enforce their rights and remedies hereunder and with respect to any Collateral or to otherwise carry out the purposes of this Agreement.

(oo) Schedule 4.(oo) attached hereto lists all of the patents, patent applications, trademarks, trademark applications, registered copyrights, and domain names owned by any of the Debtors as of the date hereof. Schedule 4.(oo) lists all material licenses in favor of any Debtor for the use of any patents, trademarks, copyrights and domain names as of the date hereof. All United States material patents and trademarks of the Debtors have been duly recorded at the United States Patent and Trademark Office and all material copyrights of the Debtors have been duly recorded at the United States Copyright Office.

(pp) Except as set forth on Schedule 4.(pp) attached hereto, none of the account debtors or other persons or entities obligated on any of the Collateral is a governmental authority covered by the Federal Assignment of Claims Act or any similar federal, state or local statute or rule in respect of such Collateral.

(qq) Until the Obligations shall have been paid and performed in full (other than inchoate indemnification obligations), the Company covenants that it shall promptly cause any Additional Debtor to enter into a Subsidiary Guarantee in favor of the Agent, for the ratable benefit of the Purchasers, in the form of Exhibit F to the Purchase Agreement.

5. **Effect of Pledge on Certain Rights.** The parties hereto agree that, if any of the Collateral subject to this Agreement consists of nonvoting equity or ownership interests (regardless of class, designation, preference or rights) that may be converted into voting equity or ownership interests upon the occurrence of certain events (including, without limitation, upon the transfer of all or any of the other stock or assets of the issuer), the pledge of such equity or ownership interests pursuant to this Agreement or the enforcement of any of Agent's rights hereunder shall not be deemed to be the type of event which would trigger such conversion rights, notwithstanding any provisions in the Organizational Documents or agreements to which any Debtor is subject or to which any Debtor is party.

6. **Defaults**. The following events shall be "Events of Default":

(a) The occurrence of an Event of Default under the Debt Securities;

(b) Any representation or warranty of any Debtor in this Agreement shall prove to have been incorrect in any material respect when made;

(c) The failure by any Debtor to observe or perform any of its obligations hereunder for ten (10) days after delivery to such Debtor of notice of such failure by the Agent unless such default is capable of cure but cannot be cured within such time frame and such Debtor is all commercially reasonable efforts to cure same in a timely fashion; or

(d) Any provision of this Agreement is at any time for any reason declared to be null and void, any Debtor contests the validity or enforceability of this Agreement, any Debtor governmental authority having jurisdiction over any Debtor commences any proceeding seeking to establish the invalidity or unenforceability of this Agreement, or any Debtor denies that any Debtor has any liability or obligation purported to be created under this Agreement.

7. **Duty To Hold In Trust**.

(a) Upon the occurrence of any Event of Default and at any time thereafter that such Event of Default remains continuing, each Debtor shall, upon receipt of any revenue, income, dividend, interest or other sums subject to the Security Interests, whether payable pursuant to the Debt Securities or otherwise, or of any check, draft, note, trade acceptance or other instrument evidencing an obligation to pay any such sum, hold the same in trust for the Purchasers and shall forthwith endorse and transfer any such sums or instruments, or both, to the Agent, for the ratable benefit of the Purchasers, for application to the satisfaction of the Obligations (and if any Debt Securities are not outstanding, pro-rata in proportion to the initial purchases of the remaining Debt Securities).

(b) If any Debtor shall become entitled to receive or shall receive any securities or other property (including, without limitation, shares of Pledged Securities or instruments representing Pledged Securities acquired after the date hereof, or any options, warrants, rights or other similar property or certificates representing a dividend, or any distribution in connection with any recapitalization, reclassification or increase or reduction of capital, or issued in connection with any reorganization of such Debtor or any of its direct or indirect subsidiaries) in respect of the Pledged Securities (whether as an addition to, in substitution of, or in exchange for, such Pledged Securities or otherwise), such Debtor agrees to (i) accept the same as the agent of the Purchasers; (ii) hold the same in trust on behalf of and for the benefit of the Purchasers; and (iii) to deliver any and all certificates or instruments evidencing the same to Agent on or before the close of business on the fifth business day following the receipt thereof by such Debtor, in the exact form received together with the Necessary Endorsements, to be held by Agent subject to the terms of this Agreement as Collateral.

8. **Rights and Remedies Upon Default**.

(a) Upon the occurrence of any Event of Default and at any time thereafter that such Event of Default remains continuing, the Purchasers, acting through the Agent, shall have the right to exercise all of the remedies conferred hereunder and under the Debt Securities, and the Purchasers, acting through the Agent, shall have all the rights and remedies of a secured party under the UCC. Without limitation, the Agent, for the benefit of the Purchasers, shall have the following rights and powers:

(i) The Agent shall have the right to take possession of the Collateral and, for that purpose, enter, with the aid and assistance of any person, any premises where the Collateral, or any part thereof, is or may be placed and remove the same, and each Debtor shall assemble the Collateral and make it available to the Agent at places which the Agent shall reasonably select, whether at such Debtor's premises or elsewhere, and make available to the Agent, without rent, all of such Debtor’s respective premises and facilities for the purpose of the Agent taking possession of, removing or putting the Collateral in saleable or disposable form.

(ii) Upon notice to the Debtors by Agent, all rights of each Debtor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise and all rights of each Debtor to receive the dividends and interest which it would otherwise be authorized to receive and retain, shall cease. Upon such notice, Agent shall have the right to receive, for the ratable benefit of the Purchasers, any interest, cash dividends or other payments on the Collateral and, at the option of Agent, to exercise in such Agent’s discretion all voting rights pertaining thereto. Without limiting the generality of the foregoing, Agent shall have the right (but not the obligation) to exercise all rights with respect to the Collateral as it were the sole and absolute owner thereof, including, without limitation, to vote and/or to exchange, at its sole discretion, any or all of the Collateral in connection with a merger, reorganization, consolidation, recapitalization or other readjustment concerning or involving the Collateral or any Debtor or any of its direct or indirect subsidiaries.

(iii) The Agent shall have the right to use the Collateral and shall have the right to assign, sell, lease or otherwise dispose of and deliver all or any part of the Collateral, at public or private sale or otherwise, either with or without special conditions or stipulations, for cash or on credit or for future delivery, in such parcel or parcels and at such time or times and at such place or places, and upon such terms and conditions as the Agent may deem commercially reasonable, all without (except as shall be required by applicable statute and cannot be waived) advertisement or demand upon or notice to any Debtor or right of redemption of a Debtor, which are hereby expressly waived. Upon each such sale, lease, assignment or other transfer of Collateral, the Agent, for the ratable benefit of the Purchasers, may, unless prohibited by applicable law which cannot be waived, purchase all or any part of the Collateral being sold, free from and discharged of all trusts, claims, right of redemption and equities of any Debtor, which are hereby waived and released.

(iv) The Agent shall have the right (but not the obligation) to notify any account debtors and any obligors under instruments or accounts to make payments directly to the Agent, on behalf of the Purchasers, and to enforce the Debtors' rights against such account debtors and obligors.

(v) The Agent, for the ratable benefit of the Purchasers, may (but is not obligated to) direct any financial intermediary or any other person or entity holding any investment property to transfer the same to the Agent, on behalf of the Purchasers, or its designee.

(vi) The Agent may (but is not obligated to) transfer any or all Intellectual Property registered in the name of any Debtor at the United States Patent and Trademark Office and/or Copyright Office into the name of the Purchasers or any designee or any purchaser of any Collateral.

(b) The Agent shall comply with any applicable law in connection with a disposition of Collateral and such compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral. The Agent may sell the Collateral without giving any warranties and may specifically disclaim such warranties. If the Agent sells any of the Collateral on credit, the Debtors will only be credited with payments actually made by the purchaser. In addition, each Debtor waives any and all rights that it may have to a judicial hearing in advance of the enforcement of any of the Agent's rights and remedies hereunder, including, without limitation, its right following an Event of Default to take immediate possession of the Collateral and to exercise its rights and remedies with respect thereto.

(c) For the purpose of enabling the Agent to further exercise rights and remedies under this Section 8 or elsewhere provided by agreement or applicable law, each Debtor hereby grants to the Agent, for the ratable benefit of the Purchasers an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Debtor) to use, license or sublicense following an Event of Default, any Intellectual Property now owned or hereafter acquired by such Debtor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.

9. **Applications of Proceeds.** The proceeds of any such sale, lease or other disposition of the Collateral hereunder or from payments made on account of any insurance policy insuring any portion of the Collateral shall be applied first, to the expenses of retaking, holding, storing, processing and preparing for sale, selling, and the like (including, without limitation, any taxes, fees and other costs incurred in connection therewith) of the Collateral, to the reasonable attorneys' fees and expenses incurred by the Agent in enforcing its and the Purchasers' rights hereunder and in connection with collecting, storing and disposing of the Collateral, and then to satisfaction of the Obligations pro rata among the Purchasers (based on then-outstanding principal amounts of Debt Securities at the time of any such determination), and to the payment of any other amounts required by applicable law, after which the Purchasers shall pay to the applicable Debtor any surplus proceeds. If, upon the sale, license or other disposition of the Collateral, the proceeds thereof are insufficient to pay all amounts to which the Agent and the Purchasers are legally entitled, the Debtors will be liable for the deficiency, together with interest thereon, at the rate of 12% per annum or the lesser amount permitted by applicable law (the "Default Rate"), and the reasonable fees of any attorneys employed by the Agent and the Purchasers to collect such deficiency. To the extent permitted by applicable law, each Debtor waives all claims, damages and demands against the Agent and the Purchasers arising out of the repossession, removal, retention or sale of the Collateral, unless due solely to the gross negligence or willful misconduct of the Agent and the Purchasers as determined by a final judgment (not subject to further appeal) of a court of competent jurisdiction.

10. **Securities Law Provision.** Each Debtor recognizes that Agent may be limited in its ability to effect a sale to the public of all or part of the Pledged Securities by reason of certain prohibitions in the Securities Act of 1933, as amended, or other federal or state securities laws (collectively, the "Securities Laws"), and may be compelled to resort to one or more sales to a restricted group of purchasers who may be required to agree to acquire the Pledged Securities for their own account, for investment and not with a view to the distribution or resale thereof. Each Debtor agrees that sales so made may be at prices and on terms less favorable than if the Pledged Securities were sold to the public, and that Agent has no obligation to delay the sale of any Pledged Securities for the period of time necessary to register the Pledged Securities for sale to the public under the Securities Laws. Each Debtor shall cooperate with Agent in its attempt to satisfy any requirements under the Securities Laws (including, without limitation, registration thereunder if requested by Agent) applicable to the sale of the Pledged Securities by Agent.

11. **Costs and Expenses**. Each Debtor agrees to pay all reasonable out-of-pocket fees, costs and expenses incurred in connection with any filing required hereunder, including without limitation, any financing statements pursuant to the UCC, continuation statements, partial releases and/or termination statements related thereto or any expenses of any searches reasonably required by the Agent. The Debtors will also, upon demand, pay to the Agent the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel, which the Agent, for the benefit of the Purchasers, may incur in connection with the creation, perfection, protection, foreclosure, collection or enforcement of the Security Interest and the preparation, administration, continuance, amendment or enforcement of this Agreement and pay to the Agent the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel, which the Agent, for the benefit of the Purchasers, and the Purchasers may incur in connection with (i) the enforcement of this Agreement, (ii) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral, or (iii) the exercise or enforcement of any of the rights of the Purchasers under the Debt Securities. Until so paid, any fees payable hereunder shall be added to the principal amount of the Debt Securities and shall bear interest at the Default Rate.

12. **Responsibility for Collateral**. The Debtors assume all liabilities and responsibility in connection with all Collateral, and the Obligations shall in no way be affected or diminished by reason of the loss, destruction, damage or theft of any of the Collateral or its unavailability for any reason. Without limiting the generality of the foregoing, (a) neither the Agent nor any Purchaser (i) has any duty (either before or after an Event of Default) to collect any amounts in respect of the Collateral or to preserve any rights relating to the Collateral, or (ii) has any obligation to clean-up or otherwise prepare the Collateral for sale, and (b) each Debtor shall remain obligated and liable under each contract or agreement included in the Collateral to be observed or performed by such Debtor thereunder. Neither the Agent nor any Purchaser shall have any obligation or liability under any such contract or agreement by reason of or arising out of this Agreement or the receipt by the Agent or any Purchaser of any payment relating to any of the Collateral, nor shall the Agent or any Purchaser be obligated in any manner to perform any of the obligations of any Debtor under or pursuant to any such contract or agreement, to make inquiry as to the nature or sufficiency of any payment received by the Agent or any Purchaser in respect of the Collateral or as to the sufficiency of any performance by any party under any such contract or agreement, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to the Agent or to which the Agent or any Purchaser may be entitled at any time or times.

13. **Security Interests Absolute**. All rights of the Agent and the Purchasers and all of the Obligations are absolute and unconditional, irrespective of: (a) any lack of validity or enforceability of this Agreement, the Debt Securities or any agreement entered into in connection with the foregoing, or any portion hereof or thereof; (b) any change in the time, manner or place of payment or performance of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Debt Securities or any other agreement entered into in connection with the foregoing; (c) any exchange, release or nonperfection of any of the Collateral, or any release or amendment or waiver of or consent to departure from any other collateral for, or any guarantee, or any other security, for all or any of the Obligations; (d) any action by the Agent and the Purchasers to obtain, adjust, settle and cancel in its sole discretion any insurance claims or matters made or arising in connection with the Collateral; or (e) any other circumstance which might otherwise constitute any legal or equitable defense available to a Debtor, or a discharge of all or any part of the Security Interests granted hereby. Until the Obligations shall have been paid and performed in full (other than inchoate indemnification obligations), the rights of the Agent and the Purchasers shall continue even if the Obligations are barred for any reason, including, without limitation, the running of the statute of limitations or bankruptcy. Each Debtor expressly waives presentment, protest, notice of protest, demand, notice of nonpayment and demand for performance. In the event that at any time any transfer of any Collateral or any payment received by the Agent and the Purchasers hereunder shall be deemed by final order of a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under the bankruptcy or insolvency laws of the United States, or shall be deemed to be otherwise due to any party other than the Agent and the Purchasers, then, in any such event, each Debtor's obligations hereunder shall survive cancellation of this Agreement, and shall not be discharged or satisfied by any prior payment thereof and/or cancellation of this Agreement, but shall remain a valid and binding obligation enforceable in accordance with the terms and provisions hereof. Each Debtor waives all right to require the Agent and the Purchasers to proceed against any other person or entity or to apply any Collateral which the Agent and the Purchasers may hold at any time, or to marshal assets, or to pursue any other remedy.

14. **Term of Agreement**. This Agreement and the Security Interests shall terminate on the date on which all payments under the Debt Securities have been paid in full and all other Obligations have been paid or discharged (other than inchoate indemnification obligations); provided, however, that all indemnities of the Debtors contained in this Agreement shall survive and remain operative and in full force and effect regardless of the termination of this Agreement.

15. **Power of Attorney; Further Assurances**.

(a) Each Debtor authorizes the Agent, and does hereby make, constitute and appoint the Agent and its officers, agents, successors or assigns with full power of substitution, as such Debtor's true and lawful attorney-in-fact, with power, in the name of the Agent or such Debtor, to, after the occurrence and during the continuance of an Event of Default, (i) endorse any note, checks, drafts, money orders or other instruments of payment (including payments payable under or in respect of any policy of insurance) in respect of the Collateral that may come into possession of the Agent; (ii) to sign and endorse any financing statement pursuant to the UCC or any invoice, freight or express bill, bill of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts, and other documents relating to the Collateral; (iii) to pay or discharge taxes, liens, security interests or other encumbrances at any time levied or placed on or threatened against the Collateral; (iv) to demand, collect, receipt for, compromise, settle and sue for monies due in respect of the Collateral; (v) to transfer any Intellectual Property or provide licenses respecting any Intellectual Property; and (vi) generally, at the option of the Agent, and at the expense of the Debtors, at any time, or from time to time, to execute and deliver any and all documents and instruments and to do all acts and things which the Agent deems necessary to protect, preserve and realize upon the Collateral and the Security Interests granted therein in order to effect the intent of this Agreement and the Debt Securities all as fully and effectually as the Debtors might or could do; and each Debtor hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable for the term of this Agreement and thereafter as long as any of the Obligations (other than inchoate indemnification obligations) shall be outstanding. The designation set forth herein shall be deemed to amend and supersede any inconsistent provision in the Organizational Documents or other documents or agreements to which any Debtor is subject or to which any Debtor is a party. Without limiting the generality of the foregoing, after the occurrence and during the continuance of an Event of Default, each Purchaser is specifically authorized to execute and file any applications for or instruments of transfer and assignment of any patents, trademarks, copyrights or other Intellectual Property with the United States Patent and Trademark Office and the United States Copyright Office.

(b) On a continuing basis, each Debtor will make, execute, acknowledge, deliver, file and record, as the case may be, with the proper filing and recording agencies in any jurisdiction, including, without limitation, the jurisdictions indicated on Schedule 4.(y) attached hereto, all such instruments, and take all such action as may reasonably be requested by the Agent, to perfect the Security Interests granted hereunder and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to the Agent the grant or perfection of a perfected security interest in all the Collateral under the UCC.

(c) Each Debtor hereby irrevocably appoints the Agent as such Debtor's attorney-in-fact, with full authority in the place and instead of such Debtor and in the name of such Debtor, from time to time in the Agent's discretion, to take any action and to execute any instrument which the Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including the filing, in its sole discretion, of one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of such Debtor where permitted by law, which financing statements may (but need not) describe the Collateral as "all assets" or "all personal property" or words of like import, and ratifies all such actions taken by the Agent. This power of attorney is coupled with an interest and shall be irrevocable for the term of this Agreement and thereafter as long as any of the Obligations shall be outstanding.

16. **Notices**. All notices, requests, demands and other communications hereunder shall be subject to the notice provision of the Purchase Agreement.

17. **Other Security**. To the extent that the Obligations are now or hereafter secured by property other than the Collateral or by the guarantee, endorsement or property of any other person, firm, corporation or other entity, then the Agent shall have the right, in its sole discretion, to pursue, relinquish, subordinate, modify or take any other action with respect thereto, without in any way modifying or affecting any of the Purchasers' rights and remedies hereunder.

18. **[Reserved]**

19. **Miscellaneous**.

(a) No course of dealing between the Debtors, on the one hand, and the Agent and the Purchasers, on the other hand, nor any failure to exercise, nor any delay in exercising, on the part of the Agent or any of the Purchasers, any right, power or privilege hereunder or under the Debt Securities shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) All of the rights and remedies of the Agent and the Purchasers with respect to the Collateral, whether established hereby or by the Debt Securities or by any other agreements, instruments or documents or by law shall be cumulative and may be exercised singly or concurrently.

(c) This Agreement, together with the exhibits and schedules hereto, contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into this Agreement and the exhibits and schedules hereto. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Debtors and the Purchasers holding 67% or more of the principal amount of Debt Securities then outstanding, or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought; provided, however, unanimous consent shall be required for any amendment that would adversely affect any Purchaser.

(d) If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(e) No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

(f) This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. No Debtor may assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). The Purchasers are third-party beneficiaries of this Agreement. Any Purchaser may assign any or all of its rights under this Agreement to any Person (as defined in the Purchase Agreement) to whom such Purchaser assigns or transfers any Obligations, provided such transferee agrees in writing to be bound, with respect to the transferred Obligations, by the provisions of this Agreement that apply to the “Purchasers.”

(g) Each party shall take such further action and execute and deliver such further documents as may be necessary or appropriate in order to carry out the provisions and purposes of this Agreement.

(h) Except to the extent mandatorily governed by the jurisdiction or situs where the Collateral is located, all questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Except to the extent mandatorily governed by the jurisdiction or situs where the Collateral is located, each Debtor agrees that all proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and the Debt Securities (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York, Borough of Manhattan. Except to the extent mandatorily governed by the jurisdiction or situs where the Collateral is located, each Debtor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such proceeding is improper. Each party hereto hereby irrevocably waives personal service of process and consents to process being served in any such proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

(i) This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile signature were the original thereof.

(j) All Debtors shall jointly and severally be liable for the obligations of each Debtor to the Agent and the Purchasers hereunder.

(k) Each Debtor shall indemnify, reimburse and hold harmless the Agent and the Purchasers and their respective partners, members, shareholders, officers, directors, employees and agents (and any other persons with other titles that have similar functions) (collectively, "Indemnitees") from and against any and all losses, claims, liabilities, damages, penalties, suits, costs and expenses, of any kind or nature, (including fees relating to the cost of investigating and defending any of the foregoing) imposed on, incurred by or asserted against such Indemnitee in any way related to or arising from or alleged to arise from this Agreement or the Collateral, except any such losses, claims, liabilities, damages, penalties, suits, costs and expenses which result from the gross negligence or willful misconduct of the Indemnitee as determined by a final, nonappealable decision of a court of competent jurisdiction. This indemnification provision is in addition to, and not in limitation of, any other indemnification provision in the Debt Securities, the Purchase Agreement or any other agreement, instrument or other document executed or delivered in connection herewith or therewith.

(l) Nothing in this Agreement shall be construed to subject Agent or any Purchaser to liability as a partner in any Debtor or any of its direct or indirect subsidiaries that is a partnership or as a member in any Debtor or any of its direct or indirect subsidiaries that is a limited liability company, nor shall Agent or any Purchaser be deemed to have assumed any obligations under any partnership agreement or limited liability company agreement, as applicable, of any such Debtor or any of its direct or indirect subsidiaries or otherwise, unless and until the Agent or any such Purchaser exercises its right to be substituted for such Debtor as a partner or member, as applicable, pursuant hereto.

(m) To the extent that the grant of the security interest in the Collateral and the enforcement of the terms hereof require the consent, approval or action of any partner or member, as applicable, of any Debtor or any direct or indirect subsidiary of any Debtor or compliance with any provisions of any of the Organizational Documents, the Debtors hereby grant such consent and approval and waive any such noncompliance with the terms of said documents.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be duly executed on the day and year first above written.

MELA SCIENCES, INC.

By: _____
Michael R. Stewart
Chief Executive Officer

AGENT:

BROADFIN CAPITAL, LLC

By: _____
Name:

ANNEX A
to
SECURITY
AGREEMENT

FORM OF ADDITIONAL DEBTOR JOINDER

to that certain Security Agreement dated as of June 22, 2015 made by MELA Sciences, Inc. (the "Company") and its subsidiaries party thereto from time to time, as Debtors, to and in favor of the Agent identified therein (the "Security Agreement"), relating to the Company's 2.25% Senior Secured Convertible Debentures due June 22, 2020 and 9% Senior Secured Notes

Reference is made to the Security Agreement as defined above; capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in, or by reference in, the Security Agreement.

The undersigned hereby agrees that upon delivery of this Additional Debtor Joinder to the Agent referred to above, the undersigned shall (a) be an Additional Debtor under the Security Agreement, (b) have all the rights and obligations of the Debtors under the Security Agreement as fully and to the same extent as if the undersigned was an original signatory thereto and (c) be deemed to have made the representations and warranties set forth therein as of the date of execution and delivery of this Additional Debtor Joinder. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE UNDERSIGNED SPECIFICALLY GRANTS TO THE AGENT, FOR THE RATABLE BENEFIT OF THE PURCHASERS, A SECURITY INTEREST IN THE COLLATERAL AS MORE FULLY SET FORTH IN THE SECURITY AGREEMENT AND ACKNOWLEDGES AND AGREES TO THE WAIVER OF JURY TRIAL PROVISIONS SET FORTH THEREIN.

Attached hereto are supplemental and/or replacement Schedules to the Security Agreement, as applicable.

The undersigned shall deliver an executed copy of this Joinder to the Agent, and the Agent may rely on the matters set forth herein on or after the date hereof. This Joinder shall not be modified, amended or terminated without the prior written consent of the Agent.

IN WITNESS WHEREOF, the undersigned has caused this Joinder to be executed in the name and on behalf of the undersigned.

[INSERT NAMES OF ADDITIONAL DEBTORS]

By: _____
Name:
Title:

Dated: _____ __, 20__

EXHIBIT 10.4

ASSET PURCHASE AGREEMENT

by and among

MELA SCIENCES, INC.,

PHOTOMEDEX, INC.

and

PHOTOMEDEX TECHNOLOGY, INC.

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of June 22, 2015, by and among MELA Sciences, Inc., a Delaware corporation ("Purchaser"), PhotoMedex, Inc., a Nevada corporation ("PHMD") and PhotoMedex Technology, Inc., a Delaware corporation ("P-Tech" and, together with PHMD, the "Sellers" and each, a "Seller"). Purchaser and the Sellers are each sometimes referred to herein as a "Party" and, collectively, as the "Parties." Capitalized terms which are used but not otherwise defined herein are defined in Section 1.1 below.

A. As of the date hereof, PHMD directly or indirectly owns all of the issued, subscribed and paid-up share capital (the "Securities") of PhotoMedex India Private Limited, a private limited company limited by shares, incorporated under the laws of India (the "Foreign Subsidiary");

B. The Seller Companies, together with one or more direct or indirect wholly-owned Subsidiaries of PHMD, own all of the Business Assets; and

C. The Parties desire to enter into this Agreement pursuant to which (i) the Sellers agree to sell, or cause to be sold, to Purchaser, and Purchaser agrees to purchase from the Sellers, and one or more of PHMD's Subsidiaries, as the case may be, all of the Transferred Assets, and (ii) Purchaser agrees to assume and become responsible for paying, performing and discharging the Business Liabilities, on the terms and subject to the conditions contained herein.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

Section 1.1 Definitions. For the purposes of this Agreement, the following terms have the meanings set forth below:

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative thereto.

"Business" means the XTRAC and VTRAC domestic and international lines of business of P-Tech and certain of PHMD's other Subsidiaries, as described within the descriptions of "Physician Recurring" and "Professional" business segments as described in Form 10-K filed by PHMD with the SEC for the fiscal year ending on December 31, 2014.

"Business Assets" means (i) the assets and properties of the Sellers, PHMD Korea and PHMD UK to the extent such assets or properties are primarily used in, or otherwise necessary for, the operation of the Business, or (ii) are otherwise listed on Appendix I, but, in each case, specifically excluding the Excluded Assets.

"Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York, or is a day on which banking institutions located in New York, NY are authorized or required by Legal Requirement or other governmental action to close.

"Business Employee" means an employee, officer, director or other service provider of P-Tech or another wholly-owned Subsidiary of PHMD who is primarily or exclusively engaged in providing services to the Business.

"Business Intellectual Property" means all Intellectual Property of the Sellers, PHMD Korea and PHMD UK to the extent such Intellectual Property is primarily used in, or otherwise necessary for, the operation of the Business, including the Intellectual Property listed on Section 1.1(a) of the Disclosure Letter.

"Business Liabilities" means the liabilities listed on Appendix II.

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

"Consumer Business Vendor Contracts" means all vendor and supplier Contracts that are primarily used in any business of the Seller or its Affiliates, but that are not primarily used in the Business, including the Contracts with vendors and suppliers listed on Section 3.15(a)(ii) of the Disclosure Letter that are marked with an asterisk, which are not being assigned to Purchaser.

"Contract" means any agreement or contract or other binding obligation, commitment or undertaking whether written or verbal.

"Credit Agreement" means that certain Credit Agreement, dated May 12, 2014, as amended, by and between PHMD, JPMorgan Chase Bank, NA as Administrative Agent, First Niagara Bank, N.A. and PNC Bank, National Association as Co-Syndication Agents, and J.P. Morgan Securities LLC, as Lead Arranger and Bookrunner, as amended.

"Disclosure Letter" means the Disclosure Letter delivered by the Sellers to Purchaser concurrently with the execution and delivery of this Agreement.

"Employee Benefit Plan" means each "employee benefit plan" as such term is defined in Section 3(3) of ERISA and each other material employee benefit plan, program or arrangement relating to deferred compensation, bonus, severance, retention, employment, change of control, fringe benefit, profit sharing, unemployment compensation or other employee benefits, excluding any Multiemployer Plan, (i) established, maintained, sponsored or contributed to (or with respect to which an obligation to contribute has or had been undertaken) by a Seller on behalf of any current or former Business Employee or their beneficiaries or (ii) with respect to which a Seller has any current obligation or liability (continuing or otherwise) on behalf of a Business Employee.

"Environmental Laws" means all federal and state statutes or regulations concerning the pollution, protection or cleanup of the environment, including those relating to the treatment, storage, Disposal, handling, transportation, discharge, emission or release of Hazardous Substances, including the Clean Air Act, the Clean Water Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" of any entity means each entity that is treated as a single employer with such entity for purposes of Section 4001(b)(1) of ERISA or Section 414(b), (c), (m) or (o) of the Code.

"Escrow Agent" means U.S. Bank National Association.

"Escrow Agreement" means that certain Escrow Agreement, dated as of the Closing Date, by and among Purchaser, PHMD and the Escrow Agent, in the form previously agreed by the Parties.

"Escrow Amount" means seven hundred fifty thousand dollars ($750,000).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Liabilities" means all of the liabilities and obligations of the Sellers or their Affiliates other than the Business Liabilities.

"Foreign Subsidiary Cash Amount" means $28,500.00, representing the cash and cash equivalents of the Foreign Subsidiary as of the Closing Date.

"Fundamental Representations" means, collectively, the representations and warranties set forth in Section 3.1 (Organization; Power; Authorization), Section 3.2(a) (Binding Effect; Noncontravention), Section 3.3(b) (Capitalization), Section 3.7(a) (Title to Assets), Section 3.10 (Tax Matters), Section 3.11 (Environmental Matters), Section 3.14 (Employee Benefits), Section 3.19 (Brokerage), Section 4.1, (Organization; Power; Authorization), Section 4.2(a) (Binding Effect; Noncontravention), and Section 4.4 (Brokerage).

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Governmental Entity" means any transnational, domestic or foreign federal, state, local or other governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof.

"Hazardous Substance" means any waste, pollutant, contaminant, hazardous, radioactive, or toxic substance, petroleum, petroleum-based or petroleum-derived substance or waste or asbestos-containing material, the presence of which requires investigation or remediation under any Environmental Laws.

"Intellectual Property" means (a) United States and foreign patents, patent applications, continuations, continuations-in-part, divisions, reissues, patent disclosures, inventions (whether or not patentable) and improvements thereto, (b) United States and foreign trademarks, service marks, logos, trade dress and trade names or other source-identifying designations or devices, (c) United States and foreign copyrights and design rights, whether registered or unregistered, and pending applications to register the same, (d) Internet domain names and registrations thereof, (e) confidential ideas, trade secrets, computer software, including source code, derivative works, moral rights, know-how, works-in-progress, concepts, methods, processes, inventions, invention disclosures, formulae, reports, data, customer lists, mailing lists, business plans or other proprietary information, and (f) any and all other intellectual property rights throughout the world.

"IRS" means the United States Internal Revenue Service.

"Lease" means all leases, subleases and other Contracts under which any Seller Company leases, uses or occupies, or has the right to use or occupy, any real property that is primarily used in, or otherwise necessary for, the operation of the Business.

"Leased Real Estate" means all real property that any Seller Company leases, subleases or otherwise uses or occupies, or has the right to use or occupy, pursuant to a Lease.

"Legal Requirement" means any requirement arising under any action, law, treaty, rule or regulation, determination or direction of a Governmental Entity.

"Liens" means any mortgage, pledge, lien, security interest, charge, hypothecation, option, right of first refusal, easement, right of way, restriction on transfer or use, title defect, encroachment or other encumbrance or other adverse claim of any kind.

"Losses" means, with respect to any Person, any and all liabilities, costs, damages, deficiencies, penalties, fines or other losses or expenses incurred by such Person (including reasonable out-of-pocket expenses of investigation and reasonable out-of-pocket attorneys' or consultants' fees and expenses as a result or arising out of any action, suit or proceeding whether involving a Third Party Claim or a claim solely between the Parties to enforce the provisions hereof), but not including any consequential damages, special damages, incidental damages, indirect damages, punitive damages, diminution in value or lost profits, except to the extent payable by an Indemnified Person to a Person in a Third-Party Claim.

"Material Adverse Effect" means a material adverse effect on (i) the assets, liabilities, results of operations or condition (financial or otherwise) of the Business, but excluding any effect resulting from (a) general economic conditions or general effects on the industry in which the Business is primarily engaged (including as a result of an outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war, or the occurrence of any other calamity or crisis (including any act of terrorism) or any change in financial, political or economic conditions in the United States or elsewhere) not having a materially disproportionate effect on P-Tech or the Business relative to other participants in the industry in which the Business is primarily engaged, or (b) any change or amendment to any Legal Requirement or any change in the manner in which any Legal Requirement is enforced generally affecting the industry in which the Business is primarily engaged and not specifically relating to or having a materially disproportionate effect on P-Tech or the Business relative to other participants in the industry in which the Business is primarily engaged, (c) any public announcement of the transactions contemplated by this Agreement in accordance with the terms of this Agreement, or (d) any action taken by Purchaser or its Representatives in accordance with the terms of this Agreement, or (ii) the ability of the Sellers to perform their material obligations hereunder or to consummate the transactions contemplated hereby.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 3(37) of ERISA.

"Order" means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any Governmental Entity or by any arbitrator.

"Ordinary Course of Business" means the ordinary course of the operation of the Business consistent with past practices of the Seller Companies.

"Permits" means all permits, licenses, franchises, approvals, authorizations, and consents required to be obtained from Governmental Entities necessary to conduct and operate the Business as currently conducted or operated.

"Permitted Liens" means (i) liens for Taxes, which either (a) are not delinquent or (b) are set forth on Section 1.1(b) of the Disclosure Letter and are being contested in good faith and by appropriate proceedings and for which an appropriate reserve has been established on the Reference Balance Sheet in accordance with GAAP, (ii) mechanics', materialmen's or contractors' liens or encumbrances for construction in progress and workmen's, repairmen's, warehousemen's and carriers' liens arising in the Ordinary Course of Business and which do not materially impair the occupancy or use, value or marketability of the property which they encumber, (iii) zoning, entitlement, building and other land use regulations imposed by Governmental Entities having jurisdiction over the real property which do not materially impair the occupancy or use, value or marketability of the property which they encumber, (iv) covenants, conditions, restrictions, easements and other matters affecting the assets or property of the Business which do not materially impair the occupancy or use, value or marketability of the property which they encumber, and (v) any matters set forth on Section 1.1(b) of the Disclosure Letter.

"Person" means an individual, a partnership, a corporation, an association, a limited liability company, a joint stock company, a trust, a joint venture, an unincorporated organization or a Governmental Entity.

"PHMD Korea" means PhotoMedex Korea Limited, a company organized under the laws of South Korea.

"PHMD UK" means Photo Therapeutics Limited, a company organized under the laws of England and Wales.

"Post-Closing Tax Period" means (a) any Taxable Period beginning after the Closing Date and (b) the portion of any Straddle Period beginning after the Closing Date and ending at the end of such Straddle Period.

"Pre-Closing Tax Period" means (a) any Taxable Period ending on or before the Closing Date and (b) the portion of any Straddle Period beginning on the first day of such Straddle Period and ending at the close of the Closing Date.

"Proceeding" means any action, audit, arbitration, audit, examination, hearing, litigation, or suit (whether civil, criminal or administrative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Entity or arbitrator.

"Reference Balance Sheet" means the unaudited balance sheet of the Business as of March 31, 2015.

"Representatives" means, with respect to any Person, each of the Affiliates, directors, officers, employees, agents and other representatives (including attorneys, accountants and financial advisors) of such Person.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Seller Companies" means, collectively, PHMD, P-Tech and the Foreign Subsidiary.

"Sellers' Knowledge" means the actual knowledge of Dennis McGrath, Dolev Rafaeli, Christina L. Allgeier and Michele Pupach, after conducting a reasonable inquiry and investigation (consistent with such Person's title and/or responsibility) concerning the existence of a particular fact or matter.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation or a limited liability company (with voting securities), a majority of the total voting power of shares of stock or interest entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company (without voting securities), partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control any managing director or general partner of such limited liability company, partnership, association or other business entity.

"Target Working Capital" means $0.

"Taxable Period" means any period prescribed by any Governmental Entity for which a Tax Return is required to be filed or a Tax is required to be paid.

"Taxing Authority" means any U.S. or non-U.S. federal, national, state, provincial, county, or municipal or other local government, any subdivision, agency, commission, or authority thereof (or any quasi-governmental body) exercising any taxing authority, or any other authority exercising tax regulatory authority in its capacity as doing such.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Tax Sharing Agreement" means any Tax allocation or sharing agreement or similar Contract (other than this Agreement) that obligates the Taxpayer to make any payment computed by reference to the Taxes, taxable income or taxable Losses of any other Person, other than the indemnification and gross-up provisions of the Taxpayer's credit facilities, if any, and similar provisions of any other agreement entered into in the Ordinary Course of Business, the principal purpose of which is not related to Taxes.

"Taxes" means (i) any and all taxes, installments, assessments, charges, duties, fees, levies or other governmental charges, including income, franchise, margin, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, land transfer, employer, health, goods and services, harmonized sales, social contribution, employment insurance premium, unemployment compensation, disability, transfer, sales, use, service, escheat, unclaimed property, license, excise, gross receipts, value-added (ad valorem), add-on or alternative minimum, environmental, severance, stamp, occupation, premium, unclaimed property, escheat and all other taxes of any kind for which a Person may have any liability imposed by any Taxing Authority, whether disputed or not, and any charges, fines, interest or penalties imposed by any Taxing Authority or any additional amounts attributable or imposed with respect to such amounts, (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of being a member of an affiliated, combined, consolidated or unitary group for any Taxable Period; (iii) any liability for the payment of amounts of the type described in clause (i) or clause (ii) as a result of being a transferee of, or a successor in interest to, any Person or as a result of an express or implied obligation to indemnify any Person.

"Third Party Claim" means any claim or Proceeding by any Person, other than the Sellers, Purchaser or any of their respective Affiliates.

"Transaction Documents" means this Agreement, the Escrow Agreement, the Transition Services Agreement and the Transfer Documentation.

"Transfer Documentation" means the Bill of Sale, Assignment and Assumption Agreement, Patent Assignment, Domain Name Assignment, Trademark Assignment and such other transfer documents as the Parties shall agree, all in form and substance previously agreed by the Parties.

"Transferred Assets" means, collectively, the Securities and the Business Assets.

"Transition Services Agreement" means that certain Transition Services Agreement, dated as of the Closing Date, among the Sellers and Purchaser, in the form and substance previously agreed by the Parties.

"Working Capital" means, as of the Closing Date, the sum of the current assets of the Business of the types listed on Appendix IV less the sum of the current liabilities of the Business of the types listed on Appendix IV; provided, that, for the avoidance of doubt, Working Capital shall not include any cash of the Business, all of which (other than the Foreign Subsidiary Cash Amount) will be transferred to PHMD prior to Closing. Working Capital will be calculated in accordance with GAAP, all as set forth in more detail on Appendix IV.

Section 1.2 Additional Defined Terms.

Each of the following terms is defined in the Section set forth opposite such term:

Accounts Receivable	3.7(d)
Agreement	Preamble
Allocation Schedule	9.7
Applicable Provisions	5.6(h)
Business Assets	Preamble
Business Contracts	3.15(a)
Collar	2.5(e)
Closing	2.3
Closing Date	2.3
Closing Date Balance Sheet	2.5(a)
Closing Date Statement	2.5(a)
Continuing Employees	5.5(a)
Designated Accounting Firm	2.5(e)
Excluded Assets	2.1
FDA	2.10
FFDCA	3.20
Financial Statements	3.4(b)
Foreign Subsidiary	Recitals
Health Care Laws	3.20
Increased Escrow Amount	8.4
Indemnified Person	8.2(a)
Indemnifying Person	8.2(b)
Inventory	3.7(c)
Non-Assignable Asset	2.7
Notice of Claim	8.2(a)
Offered Employees	5.5(a)
P-Tech	Preamble
Party	Preamble
Proskauer	10.14
Purchase Price	2.3
Purchaser	Preamble
Purchaser Indemnified Persons	8.1(a)

Purchaser Plan	5.5(a)
SEC Documents	3.4(a)
Securities	Recitals
Sellers	Preamble
Seller Indemnified Persons	8.1(b)
Sellers Objections	2.5(e)
Straddle Period	9.3
Strategic Transaction	8.4
Third Party Notice	8.2(b)
Transfer Date	5.5(c)
Transfer Taxes	5.2(b)

Section 1.3 Interpretation. Unless otherwise indicated to the contrary herein by the context or use thereof (i) the words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof, (ii) the word "including" means "including, but not limited to," (iii) words importing the singular will also include the plural, and vice versa, and (iv) any reference to any federal, state, local, or foreign statute or law (including within the definition of Legal Requirement) will be deemed also to refer to all rules and regulations promulgated thereunder. References to $ will be references to United States Dollars, and with respect to any Contract, obligation, liability, claim or document that is contemplated by this Agreement but denominated in currency other than United States Dollars, the amounts described in such Contract, obligation, liability, claim or document will be deemed to be converted into United States Dollars for purposes of this Agreement as of the applicable date of determination.

ARTICLE II

PURCHASE AND SALE; CLOSING

Section 2.1 Purchase and Sale. At the Closing (or, with respect to the Securities, as provided in Section 2.8) upon the terms and subject to the conditions set forth herein, (i) Purchaser shall purchase from PHMD or its applicable Subsidiaries, and PHMD shall, and shall cause its applicable Subsidiaries to, sell, convey, assign, transfer, and deliver to Purchaser, the Securities, (ii) Purchaser shall purchase from the Sellers, and one or more of their wholly-owned Subsidiaries, and the Sellers shall, or shall cause one or more of their wholly-owned Subsidiaries to, as applicable, sell, convey, assign, transfer and deliver to Purchaser, the Business Assets, and (iii) the Sellers shall, or shall cause one or more of their wholly-owned Subsidiaries, as applicable, to assign, and Purchaser shall assume and become responsible for paying, performing and discharging, the Business Liabilities. For the avoidance of doubt, the Business Assets shall not, and shall not be deemed to, include any of the assets or properties set forth on Appendix III (the "Excluded Assets").

Section 2.2 Purchase Price. At the Closing, Purchaser shall (a) pay to PHMD for the Transferred Assets an aggregate cash purchase price equal to the sum of $42,500,000, plus the Foreign Subsidiary Cash Amount (the "Purchase Price") and (b) assume the Business Liabilities. The Purchase Price shall be payable at the Closing as described in Section 2.4.

Section 2.3 The Closing. The closing of the transactions contemplated hereby (collectively, the "Closing") shall take place at the offices of Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 (or at such other location as the Parties may agree), on the date hereof. The date of the Closing is referred to as the "Closing Date."

Section 2.4 Payment of Purchase Price; Closing Deliverables. At the Closing (or, with respect to the Securities, as provided in Section 2.8), as applicable:

(a) Purchaser shall deliver or cause to be delivered to PHMD or its designees:

(i) an amount equal to the Purchase Price less the Escrow Amount by wire transfer of immediately available funds in the amount(s) and to the account(s) specified by the Sellers;

(ii) the Escrow Agreement duly executed by Purchaser;

(iii) the Transition Services Agreement duly executed by Purchaser;

(iv) the Transfer Documentation duly executed by Purchaser;

(v) a certificate, dated as of the Closing Date and executed on behalf of Purchaser by its secretary, certifying the resolutions of the board of directors of Purchaser approving this Agreement and the transactions contemplated hereby; and

(vi) transfer documentation in respect of the Securities in the forms provided by Shardul Amarchand Mangaldas & Co.

(b) Purchaser shall deliver to the Escrow Agent, by wire transfer of immediately available funds to an account specified by the Escrow Agent, the Escrow Amount.

(c) PHMD shall deliver or cause to be delivered to Purchaser or its designees:

(i) transfer documentation in respect of the Securities in the forms provided by Shardul Amarchand Mangaldas & Co.;

(ii) the Escrow Agreement duly executed by PHMD;

(iii) the Transition Services Agreement duly executed by the Sellers;

(iv) the Transfer Documentation duly executed by the applicable Seller;

(v) certificates, dated as of the Closing Date, and executed by the secretary of each Seller and PHMD UK, certifying the resolutions of the board of directors of such Seller or PHMD UK, as applicable, approving this Agreement and the transactions contemplated hereby;

(vi) a certificate from the Governmental Entity in the state or other jurisdiction in which each Seller is organized certifying that such entity is in good standing;

(vii) subject to Section 2.8, resignations from the officers and directors of the Foreign Subsidiary effective as of the Closing Date;

(viii) a certificate stating that neither Seller is a foreign person within the meaning of Section 1445(f)(3) of the Code, prepared in accordance with Treasury Regulation Section 1.1445-2(b)(2);

(ix) a mutual release among the Sellers and their Subsidiaries (other than the Foreign Subsidiary), on the one hand, and the Foreign Subsidiary, on the other hand, in the form previously agreed by the Parties; and

(x) evidence reasonably satisfactory to Purchaser of the termination and release of all Liens (other than any Permitted Liens) on all Transferred Assets.

Section 2.5 Working Capital Adjustment.

(a) Not later than forty-five (45) days after the Closing Date, Purchaser shall cause to be delivered to PHMD a statement setting forth Purchaser's calculation of Working Capital, as of 11:59 p.m. on the Closing Date (the "Closing Date Statement") together with the balance sheet of the Business prepared as of the Closing Date from which such Closing Date Statement was derived (the "Closing Date Balance Sheet"). The Closing Date Balance Sheet for purposes of the calculation of Working Capital set forth in the Closing Date Statement shall be determined in a manner consistent with the principles used in the preparation of the Reference Balance Sheet. The review of the calculation of Working Capital set forth in the Closing Date Balance Sheet in accordance with this Section 2.5 shall be limited to a review of the changes, if any, in Working Capital as of 11:59 p.m. on the Closing Date as compared to the Target Working Capital and not a review of any changes in accounting policy or any other matter but in all events in accordance with GAAP.

(b) Purchaser shall permit PHMD and its Representatives reasonable access during normal business hours to the books and records, accountant's work papers, personnel, and facilities of the Purchaser pertaining to the operation of the Business in order to complete its review of the Closing Date Statement, the calculation of the Working Capital, as of 11:59 p.m. on the Closing Date and the Closing Date Balance Sheet and for the purpose of resolving any disputes with respect thereto.

(c) Within thirty (30) days after receipt of the Closing Date Statement, PHMD may either inform Purchaser in writing that the Closing Date Statement is acceptable or object thereto in writing, setting forth its objections (the "Seller Objections"). The Seller Objections shall set forth PHMD's calculation of the applicable amounts and shall specify those items or amounts as to which PHMD disagrees, and PHMD shall be deemed to have agreed with all other items and amounts contained in the Closing Date Statement. If PHMD delivers the Seller Objections and PHMD and Purchaser do not resolve all such Seller Objections on a mutually agreeable basis within fifteen (15) Business Days after Purchaser's receipt of the Seller Objections, any Sellers Objection as to which Purchaser and PHMD cannot agree upon may be submitted by either Purchaser or PHMD to a mutually acceptable accounting firm (the "Designated Accounting Firm") for resolution as provided herein. If PHMD and Purchaser cannot agree on a Designated Accounting Firm within five (5) Business Days after the expiration of the fifteen (15) Business Day period set forth above, then Deloitte LLP shall be the Designated Accounting Firm. The Designated Accounting Firm shall have the power, authority and duty to resolve any outstanding Seller Objections and the decision of the Designated Accounting Firm shall be final and binding upon the Parties. Upon the agreement of PHMD and Purchaser or the decision of the Designated Accounting Firm, the Closing Date Statement, as adjusted in accordance with this Section 2.5, if necessary, shall be final and conclusive with respect to the calculation of Working Capital, as of 11:59 p.m. on the Closing Date. If PHMD fails to deliver any Seller Objections to Purchaser within the first thirty (30) day period referred to above or if PHMD informs Purchaser in writing that the Closing Date Statement is acceptable, the Closing Date Statement delivered by Purchaser shall be final and binding on the Parties.

(d) In resolving any disputed item, the Designated Accounting Firm (i) shall be bound by the provisions of this Section 2.5, (ii) may not assign a value to any item greater than the highest value claimed for such item or less than the lowest value for such item claimed by either Purchaser or PHMD, (iii) shall restrict its decision to such items included in the Seller Objections which are then in dispute, (iv) may review only the written presentations of Purchaser and PHMD in resolving any matter which is in dispute, and (v) shall render its decision in writing within thirty (30) days after the disputed items have been submitted to it. Upon the resolution of all Seller Objections, the Closing Date Balance Sheet shall be revised to reflect the resolution. If PHMD makes any Seller Objections, the fees, costs and expenses of the Designated Accounting Firm shall be paid (x) by PHMD, if the Seller Objections are resolved in favor of Purchaser, or (y) by Purchaser, if the Seller Objections are resolved in favor of PHMD. If the Seller Objections are resolved part in favor of PHMD and part in favor of Purchaser, such fees, costs and expenses shall be shared by Purchaser and PHMD in proportion to the aggregate amount of the Seller Objections resolved in favor of PHMD compared to the aggregate amount of the Seller Objections resolved in favor of Purchaser.

(e) If the Working Capital as of 11:59 p.m. on the Closing Date as finally determined in accordance with this Section 2.5 exceeds the Target Working Capital, Purchaser shall, within five (5) Business Days after such final determination, pay an amount equal to such excess to PHMD in cash by wire transfer of immediately available funds to an account specified by PHMD; provided, however, that in no event shall Purchaser be required to make any such payment to PHMD unless and until the amount of such excess exceeds $450,000 (the "Collar"), whereupon Purchaser shall be required to pay only the amount of such excess exceeding the Collar, up to a maximum payment amount of $500,000. If the Working Capital as of 11:59 p.m. on the Closing Date as finally determined in accordance with this Section 2.5 is less than the Target Working Capital, PHMD shall, within five (5) Business Days after such final determination, pay an amount equal to the absolute value of such shortfall to Purchaser in cash by wire transfer of immediately available funds to an account specified by Purchaser; provided, however, that in no event shall PHMD be required to make any such payment to Purchaser unless and until the absolute value of the amount of such shortfall exceeds the Collar, whereupon PHMD shall be required to pay only the amount of the absolute value of such shortfall exceeding the Collar, up to a maximum payment amount of $500,000. If the Working Capital as of 11:59 p.m. on the Closing Date as finally determined in accordance with this Section 2.5 (i) is equal to the Target Working Capital, or (ii) exceeds or is less than the Target Working Capital by an amount that is less than or equal to the Collar, then neither Purchaser nor PHMD shall owe any amount to the other Party pursuant to this Section 2.5. The Parties shall treat any payments in accordance with this Section 2.5(e) as an adjustment to the Purchase Price.

(f) Purchaser agrees that, following the Closing through the date that payment, if any, is made pursuant to Section 2.5(e), Purchaser will not knowingly take any actions that would make it impossible to calculate Working Capital as of the Closing Date in the manner and utilizing the methods required by this Agreement.

Section 2.6 Withholding Tax. Purchaser shall be entitled to deduct and withhold from the Purchase Price all Taxes that Purchaser may be required to deduct and withhold under any provision of the Code or any provision of applicable Legal Requirements. To the extent that amounts are so withheld, all such amounts withheld by Purchaser shall be treated for all purposes of this Agreement as having been paid to the Sellers by Purchaser. To the extent that Purchaser becomes aware of any withholding Taxes applicable to the payment of the Purchase Price (other than due to a failure to provide the certificates specified in Section 2.4(c)(viii)), Purchaser shall provide prompt written notice to the Sellers of the amount of such Tax and the reason for such withholding. The Parties will undertake commercially reasonable efforts to minimize withholding Taxes on the payments contemplated by this Agreement.

Section 2.7 Non-Assignable Asset. To the extent that any Business Asset is not assignable without the consent of another party, this Agreement shall not constitute an assignment or an attempted assignment thereof if such assignment or attempted assignment would constitute a breach thereof or a default thereunder. The Sellers, on the one hand, and Purchaser, on the other hand, shall use commercially reasonable efforts to obtain the consent of such other party to the assignment of any such Business Asset to Purchaser in all cases in which such consent is or may be required for such assignment. If any such consent shall not be obtained with respect to any such Business Asset (each, a "Non-Assignable Asset"), to the extent permitted by Legal Requirement, (i) the Sellers shall cooperate with Purchaser in any mutually agreeable reasonable arrangement designed to provide to Purchaser substantially equivalent benefits to those that would have been assigned to Purchaser with respect to the relevant Non-Assignable Asset had such consent been obtained, including enforcement thereof and of all rights of the Sellers against any other Person with respect to such Non-Assignable Asset, (ii) the Sellers shall take all such actions and do, or cause to be done, all such things as shall reasonably be necessary and proper in order that the value of any Non-Assignable Assets shall be preserved and shall inure to the benefit of Purchaser, (iii) the Sellers shall pay over to Purchaser promptly following receipt, all monies collected by or paid to the Sellers in respect of such Non-Assignable Assets, and (iv) the Purchaser shall have the sole responsibility for all obligations and liabilities arising out of such Non-Assignable Assets to the extent that the same would have constituted Assumed Liabilities had such consent been obtained.

Section 2.8 Foreign Subsidiary. To the extent that any action necessary to evidence or otherwise give effect to the transfer of the Securities to Purchaser shall not yet have been taken as of the Closing Date, the Parties shall cooperate with respect to taking such action as promptly as reasonably practicable following the Closing Date and, notwithstanding anything herein to the contrary, the failure of the transfer of the Securities to Purchaser to have been evidenced or otherwise effectuated as of the Closing Date shall not in and of itself constitute or be deemed to constitute a breach of this Agreement. In the interim, to the extent permitted by Legal Requirement, (i) the Sellers shall cooperate with Purchaser in any mutually agreeable reasonable arrangement designed to provide to Purchaser substantially equivalent benefits to those that would have inured to Purchaser with respect to the Securities had all such actions been taken as of the Closing Date, and (ii) at Purchaser's request and reasonable expense, the Sellers shall take all such actions and do, or cause to be done, all such things as shall reasonably be necessary and proper in order that the existence of the Foreign Subsidiary shall be preserved. Such actions shall include, without limitation, the current directors and officers of the Foreign Subsidiary remaining in such positions until their respective successors are duly elected and qualified (but in any event, no later than December 31, 2015); provided, however, that (A) Purchaser shall use its commercially reasonable efforts to elect and qualify successor directors and officers as expeditiously as reasonably practicable; and (B) Purchaser shall indemnify and hold harmless the current directors and officers of the Foreign Subsidiary for any claim, liability or Loss to the extent arising out of or relating to the period commencing from and after the Closing and ending on the date of their respective resignations to the same extent that such indemnification would be provided to such directors and officers under (x) the Articles of Association of the Foreign Subsidiary as in effect immediately prior to the Closing, and (y) the Form of Indemnification Agreement annexed to Form 10-K filed by PHMD with the SEC for the fiscal year ending on December 31, 2014. In no event shall the Securities be transferred, or any rights thereto be granted, other than if requested or consented to by Purchaser. Notwithstanding anything to the contrary in the transfer documentation in respect of the Securities, to the maximum extent permitted by applicable Legal Requirements, the Parties shall, as between themselves, treat the Closing Date as the date that the Securities were transferred from PHMD, and Radiancy, Inc., to Purchaser.

Section 2.9 Consumer Business Vendor Contracts. To the extent any Consumer Business Vendor Contracts are used in, or otherwise necessary for, the operation of the Business, the Sellers shall, at Purchaser's sole cost and expense, cooperate with Purchaser in any mutually agreeable reasonable arrangement designed to provide to Purchaser substantially equivalent benefits to those that would have been assigned to Purchaser with respect to the relevant Consumer Business Vendor Contract(s) had such Contract(s) been assigned to Purchaser at Closing, from the Closing Date until no later than December 31, 2015; provided, however, that Purchaser shall use its commercially reasonable efforts to negotiate its own Contract(s) with the counter party(s) to such Consumer Business Vendor Contract(s) or other substitute arrangements as expeditiously as reasonably practicable. The consummation of the transactions contemplated hereby, in and of itself, shall not be deemed to limit or prevent either Party from entering into, maintaining, pursuing or negotiating its own business relationship with any counter party to a Consumer Business Vendor Contract, subject to the Parties' compliance with the other provisions of this Agreement, including without limitation Section 5.6.

Section 2.10 FDA Audit. PHMD has represented to the U.S. Food and Drug Administration (the "FDA") that the observations contained in the Form 483 report dated June 16, 2015 will be remediated and finalized within the timeframes proposed by PHMD to the FDA. To the extent that such remediation actions are under the control of PHMD, PHMD shall be responsible for taking such remediation actions. To the extent that such remediation actions are under the control of Purchaser, Purchaser will use commercially reasonable efforts to take such actions; provided, that in no event shall Purchaser incur any out-of-pocket costs and expenses as a result thereof unless they are reimbursed by PHMD. If (a) such observations are not remediated within such timeframes to the satisfaction of the FDA, (b) the remediation of such observations is otherwise unsatisfactory to the FDA (in either (a) or (b), other than as a result of Purchaser failing to use commercially reasonable efforts to take such remediation actions that are under its control but subject to the limit on out-of-pocket costs and expenses stated above) or (c) the steps necessary to remediate are other than as represented by PHMD to Purchaser, PHMD shall be responsible for any and all out-of-pocket costs and expenses resulting from such failure and/or unanticipated circumstances.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PHMD

As a material inducement to Purchaser to enter into this Agreement and to purchase the Transferred Assets, PHMD hereby represents and warrants to Purchaser as follows:

Section 3.1 Organization; Power; Authorization. Each Seller is a corporation duly organized, validly existing and in good standing under the laws of its state of organization. Each Seller has all necessary corporate power and authority to enter into, deliver and carry out its obligations pursuant to this Agreement and the Transaction Documents to which it is or will be a party. Each Seller's execution, delivery and performance of this Agreement and the Transaction Documents to which such Seller is or will be a party has been duly authorized by all necessary action on the part of such Seller. The Foreign Subsidiary is a company duly organized and validly existing under the laws of India. The Foreign Subsidiary does not own, or have any interest in any equity or an ownership interest in, any other Person. Each Seller Company, as the case may be, has all necessary power and authority to operate the applicable portion of the Business as currently conducted by it and to own and use the properties owned and used by it. The Seller Companies are duly authorized to conduct business and are in good standing under the laws of each jurisdiction where such qualification is required, except where the failure to be so qualified would not have a Material Adverse Effect.

Section 3.2 Binding Effect; Noncontravention.

(a) This Agreement has been, and each other Transaction Document to which a Seller is a party will be, duly executed and delivered by such Seller and (assuming due authorization, execution and delivery by Purchaser) constitutes (or in the case of the other Transaction Documents, will constitute) a valid and binding obligation of such Seller which is enforceable against such Seller in accordance with its terms, except as such enforceability may be limited by (i) applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (ii) general equitable principles (whether considered in a Proceeding at law or in equity).

(b) Except as set forth on Section 3.2(b) of the Disclosure Letter, neither the execution and the delivery of this Agreement or the other Transaction Documents by the Sellers nor the consummation of the transactions contemplated hereby, will (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under (or an event which with notice or lapse of time or both would become a default), give to others any rights of termination, amendment, acceleration or cancellation of or result in a violation of, (iii) result in the creation of any Lien (other than Permitted Liens) upon any Transferred Asset pursuant to, or (iv) require any authorization, consent, approval, exemption or other action by or declaration or notice to any Person or Governmental Entity pursuant to (A) any Business Contract or any material Contract to which any Seller Company is a party, by which it is bound, or to which any of its assets are subject, (B) the certificate of incorporation, bylaws or similar governing documents of any Seller Company, or (C) under any Legal Requirement.

Section 3.3 Capitalization.

(a) The authorized capital stock of P-Tech consists of 5,000 shares of common stock, all of which are issued and outstanding. All of the authorized capital stock of P-Tech has been duly authorized, is validly issued, fully paid and nonassessable and is owned of record and beneficially by PHMD, free and clear of all Liens (other than Permitted Liens and restrictions on transfer arising under the Securities Act and state or foreign securities laws).

(b) The authorized share capital of the Foreign Subsidiary is INR 24,000,000 (Indian Rupee Twenty Four Million only) divided into 24,000,000 (Twenty Four Million) ordinary equity shares of INR 1 (Indian Rupee One only) each. The issued, subscribed and paid-up share capital of the Foreign Subsidiary is INR 1,795,685 (Indian Rupees One Million Seven Hundred Ninety Five Thousand Six Hundred Eighty Five only) divided into 1,795,685 (One Million Seven Hundred Ninety Five Thousand Six Hundred Eighty Five) fully paid-up ordinary equity shares of INR 1 (Indian Rupee One only) each, which constitute the Securities. Except as set forth on Section 3.3(b) of the Disclosure Schedule, the Securities have been duly authorized and validly issued. PHMD is the owner of record of 1,795,684 (One Million Seven Hundred Ninety Five Thousand Six Hundred Eighty Four) fully paid-up ordinary equity shares of INR 1 (Indian Rupee One only) each and holds beneficial interest over the entire Securities. Out of the Securities, 1 (One) fully paid-up ordinary equity share of INR 1 (Indian Rupee One only) has been registered in the name of Radiancy Inc. as a nominee of PHMD, and PHMD holds the beneficial interest over this equity share. All of the Securities are free and clear of all Liens (other than Permitted Liens and restrictions on transfer arising under applicable securities laws).

(c) Except as set forth on Section 3.3(c) of the Disclosure Letter, there are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other Contracts that could require the Foreign Subsidiary to issue, sell, or otherwise cause to become outstanding any of its capital stock. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or similar rights with respect to the Foreign Subsidiary. No Seller Company is a party to, and there are no, voting trusts, proxies, or other agreements or understandings with respect to the voting or transfer of any of the Securities.

Section 3.4 Financial Statements.

(a) All reports, schedules, forms, statements and other documents that were required to be filed prior to the date hereof by PHMD with the SEC pursuant to the reporting requirements of the Exchange Act, as amended, are referred to herein as the "SEC Documents." All such SEC Documents are available on the EDGAR system. As of their respective dates, the disclosures and other information within the SEC Documents that related to the Business or the Transferred Assets complied in all material respects with the requirements of the Exchange Act or the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact related to the Business or the Transferred Assets or omitted to state a material fact related to the Business or the Transferred Assets required to be stated therein or necessary in order to make the statements therein with respect to the Business and/or the Transferred Assets, in light of the circumstances under which they were made, not misleading.

(b) The following financial statements for the Business are referred to hereafter, collectively, as the "Financial Statements": (i) audited balance sheet and related statements of income and cash flows of the Business as of and for the calendar years ended December 31, 2013 and December 31, 2014, and (ii) reviewed Reference Balance Sheet and the related statement of income of the Business as of and for the calendar quarter ended March 31, 2015. Each Financial Statement (including the notes thereto, if any) has been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby and fairly presents in all material respects the financial condition of the Business and its results of operations as of such dates and for the periods specified; provided, however, that the Financial Statements described in clause (ii) above lack footnotes and other presentation items required by GAAP and are subject to normal year-end adjustments, the effect of which is not material to the presentation thereof.

Section 3.5 No Undisclosed Liabilities. Except as set forth in Section 3.5 of the Disclosure Letter, the Business has no liabilities or obligations of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, except for (i) liabilities reflected or reserved against in the Reference Balance Sheet, (ii) current liabilities incurred in the Ordinary Course of Business since the date of the Reference Balance Sheet, (iii) liabilities or obligations explicitly disclosed in the Disclosure Letter as such, (iv) future performance obligations under Business Contracts or Employee Benefit Plans that did not result from any breach or default thereunder, and (v) obligations to comply with applicable Legal Requirements that did not result from any breach or default thereunder.

Section 3.6 Absence of Changes. Since March 31, 2015, except as set forth in Section 3.6 of the Disclosure Letter, the Business has been operated in the Ordinary Course of Business in all material respects and there has been, with respect to the Business, no:

(a) event that has had or would reasonably be expected to have a Material Adverse Effect;

(b) change in the Foreign Subsidiary's authorized or issued equity securities; grant of any option or right to purchase equity securities of the Foreign Subsidiary; issuance of any security convertible into such equity securities; grant of any registration rights; or purchase, redemption, retirement, or other acquisition by the Foreign Subsidiary of any such equity securities;

(c) amendment to the certificate of incorporation, bylaws or other organizational documents of the Foreign Subsidiary;

(d) payment or increase by any Seller Company of any bonuses, salaries, or other compensation to any director, officer, or employee of the Business, in each case, other than as required by any existing Contract, Legal Requirement or the terms of an Employee Benefit Plan, or entry into any employment, severance, or similar Contract with any director, officer, or employee of the Business;

(e) adoption of, or material increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement, or other Employee Benefit Plan for or with any employees of the Business;

(f) damage to or destruction or loss of any asset or property of the Business, whether or not covered by insurance, that materially and adversely affects the properties, assets, business, financial condition, or prospects of the Business or the Transferred Assets, taken as a whole;

(g) entry into, termination of, or receipt of notice of termination of (i) any license, distributorship, dealer, sales representative, joint venture, credit, or similar agreement that is material to the Business, (ii) any Contract included in the Business Assets or transaction involving the Business with a total remaining commitment by or to any Seller Company that is or is reasonably expected to be in excess of $25,000, or (iii) any other Business Contract, in each case, other than in the Ordinary Course of Business;

(h) sale, lease or other disposition of any Business Assets, other than (i) in the Ordinary Course of Business, (ii) assets or property having an aggregate value of less than $25,000, or (iii) payments of cash dividends;

(i) mortgage, pledge, or imposition of any Lien (other than Permitted Liens) on any Business Asset;

(j) cancellation or waiver of any claims or rights with respect to a Business Asset with a value in excess of $25,000;

(k) material change in the accounting methods or policies used by any Seller Company in respect of the Business; or

(l) agreement, whether oral or written, by any Seller Company to do any of the foregoing in respect of the Business.

Section 3.7 Title to Assets; Condition; Inventory; Accounts Receivable.

(a) Except as set forth in Section 3.7 of the Disclosure Letter, the Seller Companies, and one or more of their wholly-owned Subsidiaries, collectively have good and marketable title to, or a valid and binding leasehold interest in or right to use, all of the Business Assets, free and clear of all Liens except for Permitted Liens. Except for the Excluded Assets, the Business Assets comprise all assets that are primarily used in, or otherwise necessary for, the operation of the Business as conducted immediately prior to the Closing. The Business Assets, together with the services to be provided by the Sellers to the Purchaser pursuant to the Transition Services Agreement, are sufficient for the continued conduct of the Business immediately after the Closing in substantially the same manner as conducted immediately prior to the Closing.

(b) To Sellers' Knowledge, the buildings, plants, structures, and equipment of the Business are (i) structurally sound, (ii) in good operating condition and repair, ordinary wear and tear excepted, and (iii) adequate for the uses to which they are being put, in each case, in all material respects.

(c) All inventory, finished goods, raw materials, work in progress, supplies, and other inventories of the Business ("Inventory"), consists of a quality and quantity usable and salable in the Ordinary Course of Business, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All Inventory is owned by the Seller Companies free and clear of all Liens, except for Permitted Liens, and no Inventory is held on a consignment basis. The quantities of each item of Inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Business.

(d) All accounts and notes receivable of the Business held by any of the Seller Companies, and any security, claim, remedy or other right related to any of the foregoing (the "Accounts Receivable"), have arisen from bona fide, arm's length transactions entered into by the Seller Companies involving the sale of goods or the rendering of services in the Ordinary Course of Business and there is no pending or, to Sellers' Knowledge, threatened dispute regarding the Accounts Receivable.

Section 3.8 Compliance with Laws; Permits. Section 3.8 of the Disclosure Letter correctly lists each Permit that is material to the operation of the Business as conducted immediately prior to the Closing, together with the name of the Governmental Entity issuing such Permit. Each Permit is held by a Seller Company and is valid and in full force and effect, no Seller Company is in default in any material respect under, and, to Sellers' Knowledge, no condition exists that with notice or lapse of time or both would constitute a default under, any such Permit and none of such Permits will be terminated, become terminable or otherwise be materially and adversely affected solely as a result of the transactions contemplated hereby. The Seller Companies have made all material filings with Governmental Entities necessary to conduct and operate the Business as currently conducted or operated and, with respect to the Foreign Subsidiary, to permit the Foreign Subsidiary to own or use its assets in the manner in which such assets are currently owned or used. The Seller Companies are in material compliance with all applicable Legal Requirements relating to the operation of the Business.

Section 3.9 Proceedings; Orders. Except as set forth on Section 3.9 of the Disclosure Letter, there is no pending or, to Sellers' Knowledge, threatened Proceeding (or any reasonable basis therefor) (i) that challenges the validity of this Agreement or any action taken or to be taken by the Sellers in connection herewith or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement, or (ii) that has been commenced by or against any Seller Company or any of their respective assets, officers or directors that would adversely affect the Business or the Transferred Assets. Except as set forth on Section 3.9 of the Disclosure Letter, (x) there is no Order to which the Foreign Subsidiary, the Business or the Transferred Assets is subject, and (y) neither Seller is subject to any Order that relates to the Foreign Subsidiary, the Business or the Transferred Assets.

Section 3.10 Tax Matters. Except as set forth in Section 3.10 of the Disclosure Letter:

(a) All income, franchise and material Tax Returns required to be filed by or with respect to the Business, the Transferred Assets and the Foreign Subsidiary have been timely filed (taking into account all validly-obtained extensions). All such Tax Returns are true, correct, and complete in all material respects and all material Taxes due and owing (whether or not shown on such Tax Returns) have been paid. Solely with respect to the Business and the Transferred Assets, the Seller Companies have complied with all material Legal Requirements relating to the withholding of Taxes and have withheld and paid on a timely basis all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, company clinician, independent contractor, creditor, stockholder, or other third party. No Seller Company has received any notice that any Taxing Authority has threatened that it is in the process of imposing any lien for Taxes (other than a Permitted Lien) on the Transferred Assets or assets of the Foreign Subsidiary for the failure to pay any Taxes. No material deficiencies or assessments for any Taxes have been or are being asserted, or to Seller's Knowledge, proposed or threatened against the Business, Transferred Assets or the Foreign Subsidiary.

(b) No material Proceedings before any Taxing Authority are currently pending with regard to any Taxes or Tax Returns of the Sellers or their Affiliates (other than the Foreign Subsidiary where the Foreign Subsidiary files Tax Returns, separately from the Sellers and their Affiliates), or with respect to the Transferred Assets or the Business. No Proceedings before any Taxing Authority are currently pending with regard to any Taxes or Tax Returns of the Foreign Subsidiary (where the Foreign Subsidiary files Tax Returns, separately from the Sellers and their Affiliates). No Seller Company has received any written notice (or to Sellers' Knowledge, any threat) of any such audits or Proceedings as described in this Section 3.10(b).

(c) No written claims (or, to Sellers' Knowledge, oral claims) has ever been made by a Taxing Authority in a jurisdiction in which the Foreign Subsidiary does not file Tax Returns that a Seller Company or the Foreign Subsidiary is or may be subject to taxation by that jurisdiction.

(d) There are not now any extensions of time in effect with respect to the dates on which any Tax Returns of the Foreign Subsidiary were or are due to be filed.

(e) There are no outstanding or requested waivers of any statutes of limitations or agreements by or on behalf of the Foreign Subsidiary for the extension of time for the assessment of any Taxes or deficiency thereof, nor are there any requests for rulings, outstanding subpoenas or requests for information, notice of proposed reassessment of the Transferred Assets or any property owned or leased by the Foreign Subsidiary or any other matter pending between the Foreign Subsidiary, on the one hand, and any Taxing Authority, on the other hand.

(f) The Foreign Subsidiary has not entered into any transaction that constitutes a "listed transaction" within the meaning of U.S. Treasury Regulation Section 1.6011-4(b)(2).

(g) No power of attorney that is currently in force has been granted with respect to any matter relating to Taxes of the Foreign Subsidiary that would have continuing effect after the Closing Date;

(h) Neither Seller is a "foreign person" as that term is defined in Section 1445 of the Code;

(i) Since the date of its formation, the Foreign Subsidiary (i) has been classified as and properly treated as a regarded entity for U.S. federal income tax purposes and applicable provisions of state and local law, and (ii) has not made an election to be treated as other than a corporation for U.S. federal, state or local income tax purposes;

(j) The Foreign Subsidiary will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any Taxable Period (other than a Pre-Closing Taxable Period) as a result of any:

(i) use of an improper method of accounting for a Taxable Period ending on or before the Closing Date;

(ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of any state, local or foreign Tax Legal Requirements) executed on or during the Pre-Closing Tax Period;

(iii) installment sale or open transaction disposition made during the Pre-Closing Tax Period; or

(iv) prepaid amount received on or prior to the Closing Date.

(k) Notwithstanding anything in this Agreement to the contrary, (i) the representations and warranties in this Section 3.10 and Section 3.14 are the sole and exclusive representations and warranties of the Sellers concerning Tax matters, and (ii) cannot be relied upon with respect to Tax liabilities to the extent attributable to a Post-Closing Tax Period (using the methodology of Section 9.3 for the purpose of allocating Straddle Period Taxes), except to the extent that such Tax liabilities result from the breach of any of the representations in Section 3.10(j).

Section 3.11 Environmental Matters.

(a) Except for such matters as would not, individually or in the aggregate, have a Material Adverse Effect:

(i) The operation of the Business by the Seller Companies is, and has been, in compliance with all Environmental Laws, which compliance includes the possession, maintenance of, compliance with, or application for, all Permits required under applicable Environmental Laws for the operation of the Business as currently conducted.

(ii) With respect to the operation of the Business, the Seller Companies have not (i) produced, processed, manufactured, generated, transported, treated, handled, used, stored, disposed of or released any Hazardous Substances, except in compliance with Environmental Laws, at any Leased Real Estate, or (ii) exposed any employee or any third party to any Hazardous Substances.

(iii) The Seller Companies have not received written notice of and there is no Proceeding pending, or to Sellers' Knowledge, threatened against any of the Seller Companies, alleging any liability or responsibility under or non-compliance with any Environmental Law or seeking to impose any financial responsibility for any investigation, cleanup, removal, containment or any other remediation or compliance under any Environmental Law. None of the Seller Companies is subject to any Order or written agreement by or with any Governmental Entity imposing any liability or obligation with respect to any of the foregoing.

(iv) The Seller Companies have all Permits necessary for the conduct of the Business that are required under applicable Environmental Laws and are in compliance with the terms and conditions of all such Permits.

(v) The Seller Companies have provided or made available to Purchaser all environmental reports, assessments, audits, studies, investigations and data in its custody or possession concerning the Business.

(vi) None of the transactions contemplated by this Agreement or the Transaction Documents will trigger any filing requirement or other action under any applicable Environmental Law, including any environmental "transfer law."

(b) The representations and warranties in this Section 3.11 are the sole and exclusive representations of the Seller Companies concerning the environmental matters addressed in this Section 3.11, including, without limitation, any matters arising under Environmental Laws.

Section 3.12 Intellectual Property.

(a) Except as set forth in Section 3.12(a) of the Disclosure Letter, the Business Intellectual Property constitutes all material Intellectual Property that is necessary for the operation of the Business as conducted immediately prior to the Closing. The Seller Companies, or one or more of their wholly owned Subsidiaries, have good title to, or a valid and binding license to, all of the Business Intellectual Property, free and clear of all Liens except for Permitted Liens.

(b) Except as set forth in Section 3.12(b) of the Disclosure Letter, there is no pending or, to Sellers' Knowledge, threatened Proceeding by any Person: (i) challenging the applicable Seller Company's rights in or to any Business Intellectual Property; (ii) challenging the validity, enforceability or scope of any Business Intellectual Property; or (iii) asserting that any Business Intellectual Property infringes, misappropriates or otherwise violates, or would upon the commercialization of any product or service under development violate, the Intellectual Property of any Person. This Section 3.12(b) constitutes the sole representation and warranty of the Seller Companies under this Agreement with respect to any actual or alleged infringement, misappropriation or other violation by the Seller Companies of the Intellectual Property of any other Person.

(c) Except as set forth in Section 3.12(c) of the Disclosure Letter, no third Person has rights to any Business Intellectual Property. No Person is infringing, misappropriating or otherwise violating any Business Intellectual Property. The Seller Companies, or one or more of their wholly owned Subsidiaries, as applicable, have taken all steps reasonably necessary to secure their interest in Business Intellectual Property, including obtaining all necessary assignments from each of its employees, consultants and contractors pursuant to a written agreement containing a present tense assignment of all Intellectual Property created by such employee, consultant or contractor. The Seller Companies, or one or more of their wholly owned Subsidiaries, as applicable, have taken commercially reasonable steps to protect and maintain all Business Intellectual Property, including without limitation to preserve the confidentiality of any trade secrets.

Section 3.13 Real Estate. The Seller Companies do not own any real property that is used in the operation of the Business. Section 3.13 of the Disclosure Letter contains a true, complete and accurate list of the Leased Real Estate, including, each relevant Lease, the date of such Lease and any amendments thereto. Except as would not, individually or in the aggregate, be material to the Business, (i) each Seller Company has a valid and subsisting leasehold estate in each parcel of real property demised under a Lease to it for the full term of the respective Lease, free and clear of any Liens other than Permitted Liens and Liens under the Credit Agreement, (ii) all Leases are valid and in full force and effect except to the extent they have previously expired or terminated in accordance with their terms, and (iii) no Seller Company nor, to Sellers' Knowledge, any third party, has violated any provision of, or committed or failed to perform any act which, with or without notice, lapse of time or both, would constitute a default under the provisions of, any Lease. Except for Liens granted under the Credit Agreement, the Seller Companies have not assigned, pledged, mortgaged, hypothecated or otherwise transferred any Lease nor have the Seller Companies entered into with any other Person any sublease, license or other agreement that is material to the Business and that relates to the use or occupancy of all or any portion of the Leased Real Estate.

Section 3.14 Employee Benefits.

(a) Section 3.14(a) of the Disclosure Letter sets forth a true, complete and accurate list of all material Employee Benefit Plans. The Sellers have delivered or otherwise made available to Purchaser: (i) copies of all material documents embodying and relating to each Employee Benefit Plan, including the plan document, all amendments thereto and all related trust documents; (ii) the most recent annual report (Form 5500), if any, required under ERISA or the Code in respect of each Employee Benefit Plan; (iii) the most recent actuarial report (if applicable) for all Employee Benefit Plans; (iv) the most recent summary plan description, if any, required under ERISA with respect to each Employee Benefit Plan; and (v) the most recent IRS determination or opinion letter issued with respect to each Employee Benefit Plan intended to be qualified under Section 401(a) of the Code. Other than as set forth in Section 411(d)(3) of the Code, there are no restrictions on the ability of the sponsor of each Employee Benefit Plan to amend or terminate any Employee Benefit Plan, and the sponsor of each Employee Benefit Plan has reserved such rights to amend or terminate such Employee Benefit Plan.

(b) (i) Each Employee Benefit Plan intended to qualify under Section 401(a) of the Code has received a determination or opinion letter from the Internal Revenue Service upon which it may rely regarding its tax-qualified status under the Code and, to Sellers' Knowledge, no event has occurred that would reasonably be expected to cause the loss of such qualification, (ii) all payments and contributions (including insurance premiums) due and payable as of the Closing Date to each Employee Benefit Plan required to be paid by P-Tech pursuant to the terms of an Employee Benefit Plan or by applicable Legal Requirement with respect to all prior periods have been made or provided for by P-Tech in accordance with the provisions of such Employee Benefit Plan or applicable Legal Requirement, (iii) no Proceeding has been instituted or, to Sellers' Knowledge, is threatened against any of the Employee Benefit Plans (other than routine claims for benefits and appeals of such claims), (iv) each Employee Benefit Plan complies in form and has been established, administered and maintained in all material respects in accordance with its terms and applicable Legal Requirements, including, without limitation, ERISA and the Code, (v) no Employee Benefit Plan is under an audit or investigation by the Internal Revenue Service, U.S. Department of Labor, Pension Benefit Guaranty Corporation or any other Governmental Entity, (vi) no Employee Benefit Plan provides any post-retirement health and welfare benefits to any current or former employee of P-Tech, except as required under Section 4980B of the Code, Part 6 of Title I of ERISA or any other applicable state or local Legal Requirement, and (vii) no non-exempt "prohibited transaction," as such term is defined in Section 406 of ERISA and Section 4975 of the Code, has occurred or is reasonably expected to occur with respect to any Employee Benefit Plan, and no circumstance has occurred that would subject P-Tech to a Tax or penalty imposed by either Section 502(i) of ERISA or Section 4975 of the Code.

(c) No Employee Benefit Plan to which P-Tech or any ERISA Affiliate made, or was required to make, contributions, or which any of them maintained or sponsored, during the past six years, is subject to Title IV of ERISA. Neither P-Tech nor any ERISA Affiliate contributes to, or has during the past six years contributed to, a Multiemployer Plan.

(d) Except as set forth on Section 3.14(d) of the Disclosure Letter, the consummation of the transactions contemplated by this Agreement, either alone or in combination with any other event, will not give rise to any liability under any Employee Benefit Plan, including, without limitation, liability for severance pay, unemployment compensation, termination pay or withdrawal liability, or accelerate the time of payment or vesting or increase the amount of compensation of benefits due to any current or former employee, officer, director, stockholder or other service provider of P-Tech or their beneficiaries. No amount that could be reasonably expected to be received (i) by a Business Employee (whether in cash or property), as a result of the consummation of the transactions contemplated by this Agreement, or (ii) by any employee, officer, director, stockholder or other service provider under any Employee Benefit Plan or otherwise would not be expected to be deductible by reason of Section 280G of the Code or would be subject to the excise Tax under Section 4999 of the Code. P-Tech has no indemnity obligation on or after the Closing Date for any Taxes imposed under Section 4999 or Section 409A of the Code.

(e) The representations and warranties in this Section 3.14 are the sole and exclusive representations and warranties of Seller related to the employee benefit matters addressed by such Section 3.14.

Section 3.15 Contracts.

(a) Section 3.15(a) of the Disclosure Letter sets forth an accurate list of the following Contracts to which any Seller Company is a party or by which any Seller Company is bound that is primarily used in, or otherwise necessary for, the operation of the Business (collectively, the "Business Contracts"):

(i) each Contract (other than purchase orders for Inventory) that involves performance of services or delivery of goods or materials by any Seller Company of an amount or value in excess of $50,000; provided, that Seller shall not be required to list any XTRAC customer Contract;

(ii) each Contract (other than purchase orders for Inventory) that involves performance of services or delivery of goods or materials to any Seller Company of an amount or value in excess of $25,000;

(iii) each Lease, rental or occupancy agreement, license, installment and conditional sale agreement, and other Contract affecting the ownership of, leasing of, title to, use of, or any leasehold or other interest in, any personal property (except personal property leases and installment and conditional sales agreements having aggregate payments of less than $50,000);

(iv) each Contract in respect of Business Intellectual Property (other than licenses for shrinkwrap, clickwrap or other similar commercially available off-the-shelf software that has not been modified or customized by a third party for the Business);

(v) each collective bargaining agreement and other Contract to or with any labor union or other employee representative of a group of employees;

(vi) each joint venture, partnership, and other Contract (however named) involving a sharing of profits, losses, costs, or liabilities by any Seller Company with any other Person;

(vii) any agreement relating to indebtedness for borrowed money or extensions of credit;

(viii) each Contract containing covenants that restrict the business activity of any Seller Company, including, but not limited to, any exclusivity covenants, or limit the freedom of any Seller Company to engage in any line of business or to compete with any Person;

(ix) any agreement providing for indemnification by any Seller Company, other than indemnification provided to customers or vendors in the Ordinary Course of Business;

(x) any employment or consulting Contract with any Business Employee, or any consultant or contractor of the Business, other than at-will arrangements that do not include severance or "change of control" provisions; and

(xi) each amendment, supplement, and modification (whether oral or written) in respect of any of the foregoing.

(b) Except as set forth in Section 3.15(b) of the Disclosure Letter, as of the date hereof, all of the Business Contracts are in full force and effect and are enforceable in accordance with their terms except to the extent that such enforceability (i) may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditors' rights generally, and (ii) is subject to general principles of equity.

(c) Except as set forth in Section 3.15(c) of the Disclosure Letter, as of the date hereof, no Seller Company is in breach in any material respect of or default under (and to Sellers' Knowledge, no event has occurred which with notice or the passage of time or both would constitute a breach in any material respect of or default under) any Business Contract nor, to Sellers' Knowledge, is any other party to any such Business Contract in breach in any material respect of or default under such Business Contract.

Section 3.16 Labor Matters. Since January 1, 2012, neither Seller with respect to the Business has been or is a party to any collective bargaining agreement. There is no material strike, work stoppage, walkout, slowdown or picketing by any Business Employees, nor is any material grievance proceeding in progress or pending, or to Sellers' Knowledge, threatened, between any Seller Company, on the one hand, and any Business Employee or any union or collective bargaining unit, on the other hand. Since January 1, 2012, (i) the Sellers with respect to the Business have complied in all material respects with all Legal Requirements relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, worker classification, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health and plant closings and (ii) there has not been, there is not presently pending or existing, and, to Sellers' Knowledge, there is not threatened, any complaint, charge or Proceeding against the Sellers with respect to the Business relating to an alleged material violation of any Legal Requirement pertaining to labor relations or employment matters.

Section 3.17 Insurance. All policies of insurance existing on the date hereof relating to the Business, the Business Assets and the Business Employees (except for any such policies maintained to provide benefits to employees under an Employee Benefit Plan) are in full force and effect, and no Seller Company is in default in any material respect with respect to its obligations under any such insurance policies. All premiums and other payments due from any Seller Company prior to the date of this Agreement under or on account of any such insurance policies have been paid as of the date hereof. Except as set forth on Section 3.17 of the Disclosure Letter, there is no material insurance claim by any Seller Company pending under any of the policies in respect of the Business.

Section 3.18 Affiliate Transactions. Except as set forth in Section 3.18 of the Disclosure Letter, there are no Contracts relating to transactions (other than related to continuing employment and benefit matters on arms' length terms) between the Foreign Subsidiary, on the one hand, and the Sellers or any stockholder, director or executive officer of any Seller Company or any member of such stockholder's, director's or executive officer's immediate family, or any Affiliate of such stockholder, director or executive officer on the other hand (other than agreements related to their employment on arms' length terms). Except as set forth in Section 3.18 of the Disclosure Letter, no director or executive officer of a Seller Company owns directly or indirectly on an individual or joint basis any interest (other than passive investments in publicly traded securities) in, or serves as an executive officer or director of, any supplier or other Person (other than the other Seller Companies or PHMD's Subsidiaries) which has a material business relationship with a Seller Company.

Section 3.19 Brokerage. Except as set forth on Section 3.19 of the Disclosure Letter, no Seller Company has any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Purchaser could become liable or obligated.

Section 3.20 FDA and Regulatory Matters. Except as set forth in Section 3.20 of the Disclosure Letter: (i) no Seller Company has received, in respect of the Business, any written notice of adverse filing, warning letter, untitled letter or other written correspondence or written notice from the FDA, or any other Governmental Entity, alleging or asserting noncompliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.) (the "FFDCA"); (ii) each Seller Company is in compliance in all material respects with applicable health care laws, including without limitation, the FFDCA, and the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), and the regulations promulgated pursuant to such laws, and comparable state laws (collectively, "Health Care Laws"); (iii) no Seller Company has received written notice that any Governmental Entity has taken, is taking or intends to take action to limit, suspend, modify or revoke any Permits required by the Health Care Laws that are applicable to the Business, which has not been resolved in such Seller Company's favor; and (iv) no Seller Company has, in respect of the Business, either voluntarily or involuntarily, initiated, conducted, issued or caused to be initiated, any recall, market withdrawal, safety alert, post-sale warning, "dear doctor" letter, or other notice or action material to the Business relating to the alleged lack of safety or efficacy of any product or any alleged product defect or violation and, to Sellers' Knowledge, no Person has initiated or conducted any such notice or action against any Seller Company. To Sellers' Knowledge, the research, studies and tests conducted by or on behalf of each Seller Company in respect of the Business have been conducted with reasonable care and in accordance in all material respects with experimental protocols, procedures and controls adopted by such Seller Company pursuant to all Health Care Laws and Permits required by the Health Care Laws that are applicable to such Seller Company or the Business.

Section 3.21 Foreign Corrupt Practices; OFAC. No Seller Company nor, to Sellers' Knowledge, any director, officer, agent, employee or other person acting on behalf of any Seller Company, has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, or (iv) made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment. No Seller Company nor, to Sellers' Knowledge, any director, officer, agent, employee or Affiliate of any Seller Company is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department; and the Sellers will not use the Purchase Price, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department.

Section 3.22 Accounting and Disclosure Controls. Each applicable Seller Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions related to the Business are executed in accordance with management's general or specific authorizations, (ii) transactions related to the Business are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset and liability accountability, (iii) access to assets or incurrence of liabilities is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets and liabilities is compared with the existing assets and liabilities at reasonable intervals and appropriate action is taken with respect to any difference. PHMD maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 under the Exchange Act) that are effective in ensuring that information required to be disclosed by PHMD in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the rules and forms of the SEC, including, without limitation, controls and procedures designed to ensure that information required to be disclosed by PHMD in the reports that it files or submits under the Exchange Act is accumulated and communicated to PHMD's management, including its principal executive officer or officers and its principal financial officer or officers, as appropriate, to allow timely decisions regarding required disclosure. During the twelve (12) months prior to the date hereof, PHMD has not received any notice or correspondence from any accountant relating to any material weakness in any part of the system of internal accounting controls of PHMD.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

As a material inducement to the Sellers to enter into this Agreement and to sell the Transferred Assets, Purchaser hereby represents and warrants to the Sellers as follows:

Section 4.1 Organization, Power; Authorization. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Purchaser has the requisite corporate power and authority and all material Permits necessary to enter into, deliver and carry out its obligations pursuant to this Agreement and the Transaction Documents to which it is or will be a party. Purchaser's execution, delivery and performance of this Agreement and the Transaction Documents to which it is or will be a party has been duly authorized by Purchaser.

Section 4.2 Binding Effect; Noncontravention.

(a) This Agreement has been duly executed and delivered by Purchaser and (assuming due authorization, execution and delivery by the Sellers) constitutes a valid and binding obligation of Purchaser which is enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by (i) applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (ii) general equitable principles (whether considered in a Proceeding at law or in equity).

(b) The execution, delivery and performance by Purchaser of this Agreement do not and shall not: (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under or result in a violation of, (iii) result in the creation of any Lien upon the assets of Purchaser pursuant to, or (iv) require any Permit or authorization, consent, approval, exemption or other action by or declaration or notice to any Person pursuant to (A) any material Contract to which Purchaser is a party, by which it is bound, or to which any of its assets are subject, or (B) the certificate of incorporation, bylaws or similar governing documents of Purchaser.

Section 4.3 Consents. No notice to, filing with, or Permit, or consent or approval of any Person (including any Person which provides financing to Purchaser or its Affiliates) is necessary for the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby by Purchaser.

Section 4.4 Brokerage. Purchaser has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement for which the Sellers could become liable or obligated.

Section 4.5 Financing. As of the date hereof and as of the Closing Date, Purchaser has and will have sufficient unrestricted funds on hand or committed financing sources to pay the Purchase Price and to pay all fees and expenses incurred by it in connection with the transactions contemplated hereunder.

Section 4.6 Proceedings; Orders. There is no Proceeding or investigation pending or, to the knowledge of Purchaser, threatened against Purchaser, its properties or businesses, that (i) challenges the validity of this Agreement or any action taken or to be taken by Purchaser in connection herewith, or (ii) seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement, or which, individually or in the aggregate, would impair or delay the ability of Purchaser to effect the Closing. Purchaser is not subject to any Order that, individually or in the aggregate, would impair or delay the ability of Purchaser to affect the Closing.

Section 4.7 Investment. Purchaser is acquiring the Securities for its own account, for investment only, and not with a view to any resale or public distribution thereof. Purchaser shall not offer to sell or otherwise dispose of the Securities in violation of any Legal Requirement applicable to any such offer, sale or other disposition. Purchaser acknowledges that (i) the Securities have not been registered under the Securities Act, or any state or foreign securities laws, (ii) there is no public market for the Securities and there can be no assurance that a public market shall develop, and (iii) it must bear the economic risk of its investment in the Securities for an indefinite period of time. Purchaser has all requisite legal power and authority to acquire the Securities in accordance with the terms of this Agreement and is an “Accredited Investor” within the meaning of the Securities and Exchange Commission Rule 501 of Regulation D of the Securities Act, as presently in effect.

Section 4.8 Solvency. Immediately after giving effect to the Closing, Purchaser will be able to pay its debts as they become due and will own property which has a fair saleable value greater than the amounts required to pay its probable liability on its debts as they mature. Immediately after giving effect to the transactions contemplated by this Agreement, Purchaser will not have unreasonably small capital with which to carry on its business. No transfer of property is being made and no obligation is being incurred by Purchaser in connection with the transactions contemplated by this Agreement with the intent to hinder, delay or defraud creditors of Purchaser.

ARTICLE V

COVENANTS

Section 5.1 Public Announcements; SEC Filings. Neither the Sellers, nor Purchaser, nor any of their respective Affiliates, shall 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 consent of the other Parties, except as may be required by listing requirements or Legal Requirements. Notwithstanding the foregoing, the Parties have prepared a joint press release to be issued by the Parties immediately following the execution of this Agreement. The Parties shall cooperate with each other and use their reasonable best efforts to promptly prepare and file all reports, including current reports on Form 8-K and comments thereto, in connection with this Agreement and the transactions contemplated hereby.

Section 5.2 Transaction Expenses; Transfer Taxes.

(a) Purchaser shall bear all fees and expenses incurred by Purchaser and its Representatives in connection with the negotiation and execution of this Agreement and each other Transaction Document and the consummation of the transactions contemplated hereby and thereby. The Sellers shall bear all fees and expenses incurred by the Sellers in connection with the negotiation and execution of this Agreement and each other Transaction Document and the consummation of the transactions contemplated hereby and thereby. The fees and expenses of Shardul Amarchand Mangaldas & Co. incurred by the Foreign Subsidiary (or, PHMD, as applicable) in connection with the negotiation and execution of this Agreement and the transfer documentation in respect of the Foreign Subsidiary, and the consummation of the transactions contemplated hereby and thereby shall be borne one half by Purchaser and one half by PHMD.

(b) Notwithstanding anything to the contrary in this Agreement, all stamp, transfer, documentary, sales, use, registration and other such Taxes, levies and fees (including any penalties and interest) incurred in connection with this Agreement and the transactions contemplated hereby (collectively, "Transfer Taxes"), and the reasonable costs of preparing and filing the Tax Returns associated therewith, will be borne solely by Sellers. All Tax Returns with respect to Transfer Taxes shall be prepared and filed by the Person that customarily is responsible for the filing of such Tax Returns. The Parties shall reasonably cooperate with one another to lawfully minimize Transfer Taxes and Sellers shall, if Purchaser is the filing party of a particular Transfer Tax Return, pay to Purchaser the associated Transfer Taxes (and costs) to the Purchaser within three (3) Business Days prior to the payment due date of such Transfer Taxes and Purchaser shall duly remit such Taxes to the appropriate Taxing Authority.

Section 5.3 Further Assurances. The Parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things not inconsistent with this Agreement, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the Transaction Documents. In addition, and without limitation of the foregoing, in the event that either Seller shall, following the Closing, come into possession of any of the Business Assets, such Seller shall promptly cause the transfer of such Business Assets to Purchaser and shall take such actions reasonably requested by Purchaser to memorialize such transfer.

Section 5.4 Post-Closing Access. Following the Closing, Purchaser shall, and shall cause the Foreign Subsidiary to, provide to PHMD and its Representatives reasonable access to the personnel, representatives, attorneys, accountants, properties, books and records of the Foreign Subsidiary and the Business upon reasonable advance written notice during regular business hours, and will permit PHMD to make copies of any such information in each case to the extent necessary for PHMD to comply with its obligations to the SEC or otherwise under the Exchange Act.

Section 5.5 Employees; Employees Benefit Plans.

(a) Within 24 hours following the Closing (or such other time as the Parties may mutually agree), Purchaser shall, or shall cause one of its Affiliates to, make written offers of employment to the active Business Employees who are listed on Section 5.5(a) of the Disclosure Letter (collectively, the "Offered Employees"), which offer shall remain open for five days (or such other time as the Parties may mutually agree) following the Closing Date. Each such offer shall provide (i) an annual base salary or hourly wage rate (as the case may be) not less than the base salary or hourly wage rate in effect as of the date hereof, and (ii) employee benefits that are substantially comparable in the aggregate to the employee benefits received by such Offered Employee as of the date hereof, or, in the discretion of Purchaser, employee benefits offered to similarly situated employees of Purchaser from time to time; provided, that any and all equity awards by Purchaser shall be at Purchaser's sole discretion. The Offered Employees who accept such offers of employment and become employees of Purchaser (or any of its Affiliates) shall be collectively referred to as the "Continuing Employees." Subject to Purchaser's compliance with this Section 5.5(a), the Sellers shall be solely responsible for, and liable to pay, severance (if any) that becomes due to a Business Employee and for the provision of health plan continuation coverage in accordance with the requirements of Section 4980B of the Code, Part 6 of Title I of ERISA or any other applicable state or local Legal Requirement who (x) is an Offered Employee but rejects Purchaser's (or its Affiliate's) offer of employment provided in accordance with this Section 5.5(a) and does not continue employment with the Sellers or any of their Affiliates on or after the Closing Date, (y) is not an Offered Employee and does not continue employment with the Sellers or any of their Affiliates on or after the Closing Date or (z) is a former employee of Sellers or any of their Affiliates as of the Closing Date, in each case in accordance with COBRA and the terms of the applicable plans.

(b) As soon as reasonably practicable after the Closing Date or such later date agreed to by the Parties or permitted under the Transition Services Agreement, but in no event later than December 31, 2015, the Purchaser shall take, or shall cause one of its Affiliates to take, all actions necessary to implement and establish "employee benefit plans" within the meaning of Section 3(3) of ERISA and a 401(k) plan intended to be qualified under Section 401(a) of the Code (collectively, "Purchaser Plans") in which the Continuing Employees shall be eligible to participate from and after the date of establishment. For purposes of determining eligibility to participate, vesting and benefit accrual in the Purchaser Plans, the service of each Continuing Employee prior to the Closing Date shall be treated as service with Purchaser, to the extent recognized by P-Tech prior to the Closing Date; provided, however, that such service shall not be recognized to the extent that such recognition would result in any duplication of benefits and Purchaser shall not be required to provide service credit for benefit accrual purposes under any Purchaser Plan that is a defined benefit pension plan. In addition, subject to applicable Legal Requirement, Purchaser shall ensure that the Purchaser Plans (i) waive, or caused to be waived, all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to Continuing Employees under any Purchaser Plan in which such Continuing Employees may be eligible to participate after the Closing Date and (ii) provide each Continuing Employee with credit for any co-payments and deductibles paid during the plan year in which the Closing Date occurs in satisfying any applicable deductible or out-of-pocket requirements under any Purchaser Plans that are welfare plans in which such Continuing Employee is eligible to participate after the Closing Date.

(c) Except as otherwise provided in the Transition Services Agreement, effective as of the later of the Closing Date and the date on which the Continuing Employees' employment commences with the Purchaser (such date, the "Transfer Date"), all Continuing Employees shall cease to participate in any Employee Benefit Plan sponsored by the Sellers or any of their Affiliates. The Sellers shall retain all liabilities accrued through the Transfer Date in respect of such Continuing Employees' participation in Sellers' Employee Benefit Plans, other than liabilities that are included as liabilities in the calculation of Working Capital. From and after the Transfer Date, the Purchaser shall, pursuant to and in accordance with the terms of the Transition Services Agreement, have the reimbursement obligations to Seller set forth therein with respect to the costs and expenses associated with participation by the Continuing Employees in any Employee Benefit Plans sponsored by the Sellers or any of their Affiliates.

(d) Nothing contained in this Section 5.5, expressed or implied, shall (i) be treated as the establishment, amendment or modification of any Employee Benefit Plan or Purchaser Plan or, except as expressly set forth in this Section 5.5, constitute a limitation on rights to amend, modify, merge or terminate after the Closing Date any Employee Benefit Plan or Purchaser Plan, (ii) give any current or former employee, officer, director or other independent contractor (including any beneficiary or dependent of the foregoing) of the Parties or their respective Affiliates any third party beneficiary or other rights, or (iii) except as explicitly set forth in this Section 5.5, obligate Purchaser or any of its Affiliates to (A) maintain any particular Employee Benefit Plan or Purchaser Plan, or (B) retain the employment or services of any current or former employee, officer, director or other service provider.

Section 5.6 Non-Compete and Non-Solicitation.

(a) PHMD agrees that for a period of four (4) years after the Closing Date neither it nor any of its Affiliates shall, either directly or indirectly, alone or with others, engage in, own, manage, operate, finance, control, or provide services to, any Person that sells, distributes or otherwise provides, for use in a medical practice, excimer lasers or excimer lamps; provided, that nothing in this Section 5.6(a) shall preclude PHMD or any of its Affiliates from owning, solely as an investment, up to 5% of any Person engaged in any such business.

(b) PHMD agrees that for a period of four (4) years after the Closing Date neither it nor any of its directors or Affiliates shall, without the prior written consent of Purchaser, directly or indirectly solicit the employment or services of, or retain, any Continuing Employee; provided, that the restrictions contained in this Section 5.6(b) shall not apply to solicitations through job fairs or general solicitations or advertisements not directed at any particular individual.

(c) PHMD agrees that for a period of four (4) years after the Closing Date neither it nor any of its Affiliates shall, without the prior written consent of Purchaser, knowingly cause or attempt to cause any customer of the Business to reduce or terminate its business relationship with Purchaser.

(d) Purchaser agrees that for a period of four (4) years after the Closing Date neither it nor any of its directors or Affiliates shall, without the prior written consent of the Sellers, directly or indirectly solicit the employment or services of, or retain any employee of either Seller (other than any Business Employee) as of the Closing; provided, that the restrictions contained in this Section 5.6(d) shall not apply to solicitations through job fairs or general solicitations or advertisements not directed at any particular individual.

(e) Purchaser agrees that for a period of four (4) years after the Closing Date neither it nor any of its Affiliates shall, without the prior written consent of the Sellers, knowingly cause or attempt to cause any customer of any Seller or any of their Affiliates to reduce or terminate its business relationship with such Seller or such Affiliate.

(f) If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in Section 5.6(a), (b), (c), (d) or (e) is invalid or unenforceable, then the Parties agree that the court or tribunal will have the power to reduce the scope, duration or geographic area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. This Section 5.6 will be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

(g) In the event of any breach or attempted breach of any provision contained in Section 5.6(a), (b), (c), (d) or (e), the aggrieved Party shall be entitled to injunctive and other temporary relief without the need to post a bond and, subject to the other limitations herein, to such other and further legal and equitable relief and damages as may be proper.

(h) PHMD agrees that, for the shorter of the period ending on (i) the date that is four (4) years after the Closing Date, or (ii) the date that the restrictions set forth in Section 13(e) of each of the agreements listed on Section 5.6(h) of the Disclosure Letter (the "Applicable Provisions") would otherwise expire in accordance with their terms, PHMD shall, and shall cause its Affiliates to, enforce, including by way of seeking equitable remedies and/or damages, the restrictions set forth in the Applicable Provisions for the benefit of Purchaser and its Affiliates with respect to the Business. In no event shall PHMD consent to any amendment or waive any of its rights under such agreements to the extent that the same would (x) shorten the duration of the Applicable Provisions, or (y) permit the executives restricted by the Applicable Provisions to either directly or indirectly, alone or with others, engage in, own, manage, operate, finance, control, or provide services to, any Person that sells, distributes or otherwise provides, for use in a medical practice, excimer lasers or excimer lamps.

Section 5.7 PhotoMedex Name. Purchaser understands that subsequent to the Closing, the Sellers will use the name "PhotoMedex" and that such name and any and all derivations thereof are excluded from the Transferred Assets hereunder. Immediately following the Closing, Purchaser shall change the name of the Foreign Subsidiary to a name that does not include "PhotoMedex," "PHMD" or any other names which are confusingly similar thereto, and after the Closing, Purchaser shall, and shall cause the Foreign Subsidiary to, not use, directly or indirectly, the name "PhotoMedex," "PHMD" or any other name which is confusingly similar thereto, except as necessary to satisfy its obligations hereunder.

Section 5.8 PHMD Korea Employee. Purchaser agrees that it shall, and shall cause its Affiliates to (i) enforce any and all rights of Purchaser or its Affiliates against Kosmo Meditech ("Kosmo") to cause Kosmo to fulfill its obligations pursuant to Section 3.3 of that certain Termination of Services Agreement, dated as of March 4, 2015, by and between PhotoMedex Korea Ltd. and Kosmo (the "Termination Agreement"), and (ii) pay over to PHMD promptly following receipt, all monies paid to Purchaser or its Affiliates by Kosmo pursuant to Section 3.3 of the Termination Agreement.

ARTICLE VI

[RESERVED]

ARTICLE VII

[RESERVED]

ARTICLE VIII

INDEMNIFICATION

Section 8.1 Indemnification.

(a) Subject to the limitations set forth in Section 8.3, PHMD agrees from and after the Closing Date to indemnify, defend and hold harmless Purchaser and all of its officers, managers, directors, shareholders, members, Affiliates, employees and agents (the "Purchaser Indemnified Persons") from and against any Losses actually incurred by such Purchaser Indemnified Persons arising out of or resulting from (i) any breach by any Seller Company of any representation or warranty of such Seller Company contained in this Agreement or any other Transaction Document, (ii) any breach by any Seller Company of any covenant or other obligation or agreement contained in this Agreement or any other Transaction Document, and (iii) the Excluded Liabilities; provided, in each case, that the relevant Purchaser Indemnified Person has submitted to PHMD a Notice of Claim or Third Party Notice, as applicable, in respect thereof prior to the date of expiration of any applicable survival period specified in Section 8.3.

(b) Subject to the limitations set forth in Section 8.3, Purchaser agrees from and after the Closing Date to indemnify, defend and hold harmless PHMD and all of its and its Affiliates' respective officers, managers, directors, shareholders, members, Affiliates, employees and agents (the "Seller Indemnified Persons") from and against any Losses actually incurred by the Seller Indemnified Persons arising out of or resulting from (i) any breach by Purchaser of any representation or warranty of Purchaser contained in this Agreement or any other Transaction Document, (ii) any breach by Purchaser of any covenant or other obligation or agreement of Purchaser contained in this Agreement or any other Transaction Document, and (iii) the Business Liabilities; provided, in each case, that the relevant Seller Indemnified Person has submitted to Purchaser a Notice of Claim or Third Party Notice, as applicable, in respect thereof prior to the date of expiration of any applicable survival period specified in Section 8.3.

Section 8.2 Procedures for Indemnification.

(a) If any Purchaser Indemnified Person or Seller Indemnified Person (each, an "Indemnified Person") shall claim indemnification hereunder for any matter (other than a Third Party Claim) for which indemnification is provided in Section 8.1, the Indemnified Person shall promptly after it first obtains knowledge of facts which could reasonably be expected to give rise to Losses that will serve the basis for such claim, give written notice (a "Notice of Claim") to PHMD or Purchaser, as applicable, setting forth the basis for such claim and the nature and estimated amount of the claim to the extent then feasible (which estimate shall not be conclusive of the final amount of the claim), all in reasonable detail; provided, that the failure of any Indemnified Person to give timely notice thereof shall not affect any of its rights to indemnification hereunder nor relieve PHMD or Purchaser, as the case may be, from any of its indemnification obligations hereunder, except to the extent that it is actually prejudiced by such failure. If PHMD or Purchaser, as applicable, disputes any claim set forth in the Notice of Claim, it may, at any time deliver to the Indemnified Person that has given the Notice of Claim a written notice indicating its dispute of such Notice of Claim, and the Parties shall attempt in good faith for a period of thirty (30) days after delivery of the dispute notice to agree upon the rights of the Parties with respect to such Notice of Claim. If no such agreement can be reached after good faith negotiation, the Parties shall have the rights and remedies, if any, available to them under this Agreement or applicable Legal Requirements.

(b) If an Indemnified Person shall claim indemnification hereunder arising from any Third Party Claim for which indemnification is provided in Section 8.1, the Indemnified Person shall promptly after it first obtains knowledge of such Third Party Claim, give written notice (a "Third Party Notice") to PHMD or Purchaser, as applicable (each, an "Indemnifying Person"), of the basis for such claim, setting forth the nature of the claim or demand in reasonable detail to the extent known by the Indemnified Person; provided, that the failure of any Indemnified Person to give timely notice thereof shall not affect any of its rights to indemnification hereunder nor relieve PHMD or Purchaser, as the case may be, from any of its indemnification obligations hereunder, except to the extent that it is actually prejudiced by such failure. The Indemnifying Person, upon notice to the Indemnified Person, may at any time within thirty (30) days after receiving a Third Party Notice, at its own cost and through counsel of its choosing and reasonably acceptable to the Indemnified Person, defend any claim or demand set forth in a Third Party Notice. The Indemnifying Person shall have the right to compromise and settle all indemnifiable matters related to Third Party Claims which are susceptible to being settled and as to which it shall have properly assumed the defense; provided, that the Indemnifying Party shall not, without the prior written consent of the Indemnified Person settle or compromise any Third Party Claim or consent to the entry of any final judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff of a written release or releases from all liability in respect of such Third Party Claim of all Indemnified Persons named in such Third Party Claim and the sole relief for which are monetary damages that are paid in full by the Indemnifying Party. In the event that a particular Third Party Claim is subject to the limitations set forth in Section 8.3(b) and the aggregate amount of such Third Party Claim exceeds the Indemnifying Person's applicable maximum aggregate liability, the Indemnifying Person shall not reject any settlement or compromise offer without the prior consent of the Indemnified Person. The Indemnifying Person shall from time to time and otherwise at the Indemnified Person's request apprise the Indemnified Person of the status of the claim, liability or expense and any resulting Proceeding and shall furnish the Indemnified Person with such documents and information filed or delivered in connection with such claim, liability or expense or otherwise thereto as the Indemnified Person may reasonably request, and shall diligently defend the applicable Third-Party Claim. The Indemnified Person shall not admit any liability to any third party in connection with any matter which is the subject of a Notice of Claim as to which the Indemnifying Party shall have properly assumed the defense and shall cooperate fully in the manner requested by the Indemnifying Party in the defense of such claim. Notwithstanding anything herein stated, the Indemnified Person shall at all times have the right to fully participate in such defense at its own expense directly or through counsel; provided, however, that if there exists a material conflict of interest between the Indemnified Person, on the one hand, and the Indemnifying Party, on the other hand, or if the Indemnified Person has been advised by counsel that there may be one or more legal or equitable defenses available to it that are different from or additional to those available to the Indemnifying Party, which, in either case, would make it inappropriate for the same counsel to represent both the Indemnifying Party and the Indemnified Person, then the Indemnified Person shall be entitled to retain its own counsel at the cost and expense of the Indemnifying Person (except that the Indemnifying Party shall not be obligated to pay the fees and expenses of more than one separate counsel for all Indemnified Persons, taken together). Until such time as the Indemnifying Person has timely delivered a notice of intent to defend a Third Party Claim to the Indemnified Person, the Indemnified Person shall, at the expense of the Indemnifying Person, undertake the defense of (with counsel selected by the Indemnified Person and reasonably acceptable to the Indemnifying Person) such claim, liability or expense, and shall have the right to compromise or settle such claim, liability or expense exercising reasonable business judgment; provided, that, such compromise or settlement shall not be effected within the first thirty (30) days after Indemnifying Party's receipt of such Third Party Notice without the prior written consent of the Indemnifying Person (such consent not to be unreasonably withheld, conditioned or delayed).

Section 8.3 Limitations on Indemnification.

(a) The representations and warranties made in this Agreement shall terminate upon the twelve (12) month anniversary of the Closing Date, except for the Fundamental Representations, which shall survive as follows: the representations and warranties in Section 3.10 (Tax Matters), Section 3.11 (Environmental Matters), and Section 3.14 (Employee Benefits) shall survive until sixty (60) days following the expiration of the statute of limitations applicable thereto (giving effect to any waiver, mitigation or extension thereof) and all other Fundamental Representations shall survive in perpetuity.

(b) Subject to Section 8.3(d), PHMD's maximum aggregate liability to Purchaser Indemnified Persons for indemnification (including costs incurred in the defense of such claim) under (i) Section 8.1(a)(i) (other than with respect to Fundamental Representations) shall not exceed $3,600,000; and (ii) Section 8.1 and Section 9.2, in the aggregate, shall not exceed the Purchase Price. Subject to Section 8.3(d), Purchaser's maximum aggregate liability to Seller Indemnified Persons for indemnification (including costs incurred in the defense of such claim) under Section 8.1 shall not exceed the Purchase Price.

(c) No Purchaser Indemnified Person shall be entitled to indemnification pursuant to Section 8.1(a)(i) (other than with respect to Fundamental Representations which shall not be subject to the limitations of this Section 8.3(c)) unless and until the aggregate Losses incurred by all Purchaser Indemnified Persons in respect of all claims under Section 8.1(a)(i) (other than with respect to Fundamental Representations) collectively exceeds $450,000 whereupon Purchaser Indemnified Persons shall only be entitled to indemnification hereunder (subject to the other provisions of this Article VIII) from PHMD for all such Losses incurred by Purchaser Indemnified Persons in excess of such $450,000 threshold.

(d) The amount of any Losses for which indemnification is provided under this Agreement shall be reduced by (i) any amounts realized by the Indemnified Person as a result of any indemnification, contribution or other payment by any third party, (ii) any insurance proceeds actually recovered by any Indemnified Person (which amount shall be reduced by the amount by which insurance premiums for the Indemnified Person are increased as a direct result of the Losses for which such insurance proceeds were received by the Indemnified Person) or any amounts actually recovered by any Indemnified Person pursuant to any indemnification agreement with any Person and (iii) any Tax savings actually realized by the Indemnified Person (or its Affiliate) in the taxable year in which the Loss is incurred. The Indemnified Persons shall use their commercially reasonable efforts to pursue any claims for insurance, Tax benefits, indemnification, contribution and/or other payments available from third parties with respect to Losses for which it will seek, or has sought, indemnification hereunder.

(e) Notwithstanding anything to the contrary in this Agreement, the limitations, thresholds and qualifications set forth in this Article VIII: (i) shall not apply in the case of fraud or willful breach, or (ii) in any manner preclude an Indemnified Person from seeking any non-monetary equitable remedy, including specific performance or a preliminary or permanent injunction.

(f) No claim for indemnification may be made by a Purchaser Indemnified Person and no indemnification shall be required to the extent that the Losses sustained or incurred by such Purchaser Indemnified Person for which indemnification is sought were treated and taken into account as a liability in the Working Capital.

(g) Subject to Section 8.3(f), the indemnification provided in this Article VIII and in Section 9.2 (including all limitations contained herein) shall be the sole and exclusive remedy for all matters relating to this Agreement, the transactions contemplated hereby, and for the breach of any representation, warranty, covenant or agreement contained herein, and Purchaser and PHMD each expressly waive any and all claims which it may have with respect to the foregoing, other than any Indemnification Claims to the extent provided for in this Article VIII and in Section 9.2.

(h) The representations, warranties, covenants and obligations of a Party and the rights and remedies that may be exercised by the Indemnified Persons based on such representations, warranties, covenants and obligations, will survive and not be limited or affected by any investigation conducted by any Indemnified Person with respect to, or any knowledge acquired (or capable of being acquired) by such Indemnified Person at any time, whether before or after the execution and delivery of this Agreement or the Closing, with respect to the accuracy or inaccuracy of, or compliance with or performance of, any such representation, warranty, covenant or obligation, and no Indemnified Person shall be required to show that it relied on any such representation, warranty, covenant or obligation of a Party in order to be entitled to indemnification pursuant to this Article VIII.

(i) Solely for the purpose of calculating Losses arising under this Article VIII in respect of a breach of any representation or warranty (but, for the avoidance of doubt, not for the purpose of determining whether any such breach occurred), any Material Adverse Effect, materiality, material or similar limitation set forth in such representation or warranty shall be disregarded.

Section 8.4 Escrow Amount. If at any time prior to the date that is twelve (12) months from the Closing Date, (i) PHMD and/or any of its Affiliates shall enter into one or more definitive agreements with any other Person (other than a direct or indirectly wholly-owned Subsidiary of PHMD) to sell or otherwise transfer all or substantially all of PHMD's assets to such third party(s) or shall otherwise engage in any material collaboration or other strategic transaction with any other Person (other than a direct or indirectly wholly-owned Subsidiary of PHMD) outside of the Ordinary Course of Business with respect thereto (a "Strategic Transaction"), then, PHMD shall deposit with the Escrow Agent, simultaneously with the consummation of such Strategic Transaction, an additional sum such that the total amount then deposited with the Escrow Agent shall equal three million six-hundred thousand dollars ($3,600,000) (such amount, the "Increased Escrow Amount"); provided, however, if at any time during such twelve (12) month period, PHMD and/or any of its Affiliates shall enter into one or more definitive agreements with any other Person (other than a direct or indirectly wholly-owned Subsidiary of PHMD) to sell or otherwise transfer all or a substantial portion of the assets comprising the Neova business and/or the Surgical Laser Technology business, or shall otherwise engage in any material collaboration or other strategic transaction with any other Person (other than a direct or indirectly wholly-owned Subsidiary of PHMD) outside of the Ordinary Course of Business with respect thereto, PHMD shall deposit with the Escrow Agent, simultaneously with the consummation of such transaction, an amount equal to two-hundred and fifty-thousand dollars ($250,000), and (ii) the cash and cash equivalents of PHMD (either individually or on a consolidated basis) exceeds $12,000,000 at the end of any calendar month, PHMD shall, within ten (10) days of the end of each such calendar month, deposit with the Escrow Agent an amount equal to such excess; provided, that, with respect to each of the foregoing clauses (i) and (ii), once the total amount deposited with the Escrow Agent equals the Increased Escrow Amount, PHMD shall not be required to deposit any additional sum(s) with the Escrow Agent pursuant to this Section 8.4. In the event that any deposits are made with the Escrow Agent pursuant to the foregoing clauses (i) or (ii) and a Strategic Transaction is thereafter consummated, PHMD's obligation to deposit funds with the Escrow Agent shall be reduced on a dollar-for-dollar basis by the aggregate amount of such other deposits. Any payments required to be made to a Purchaser Indemnified Person pursuant to Section 8.1(a) or Section 9.2 shall be paid first from the Escrow Amount or the Increased Escrow Amount, as applicable, and thereafter, to the extent the Escrow Amount or the Increased Escrow Amount, as applicable, has been depleted, shall be paid by PHMD.

Section 8.5 Adjustments to Purchase Price. All payments under this Article VIII shall be treated as adjustments to the Purchase Price, unless otherwise required by applicable Legal Requirement.

ARTICLE IX

TAX MATTERS

Section 9.1 Cooperation on Tax Matters.

(a) The Parties shall reasonably cooperate with each other and with each other's agents, including accounting firms and legal counsel, in connection with: (i) the preparation and filing of Tax Returns pursuant to this Article IX; and (ii) Tax Proceedings. Further, each Party shall provide to the other reasonable access to the books and records in such Party's possession in connection with the preparation and filing of Tax Returns of or relating to the Foreign Subsidiary, or the conduct of a Tax Proceeding. Any information or documents provided under this Section 9.1 shall be kept confidential by the Party receiving the information or documents, except as may otherwise be necessary in connection with the filing of Tax Returns or in connection with any Proceedings relating to Taxes.

(b) Purchaser shall promptly notify PHMD in writing upon receipt by Purchaser or any of their Affiliates of notice of any Proceeding with respect to Taxes of a Foreign Subsidiary which could result in any Tax liability for which a Seller may be liable to a Purchaser Indemnified Person hereunder ("Tax Proceedings"), provided, that the failure of Purchaser to give prompt notice thereof shall not affect any of its rights to indemnification hereunder nor relieve PHMD from any of its indemnification obligations hereunder, except to the extent that Purchaser is materially prejudiced by such failure. The disposition of such Tax Proceedings shall be governed by the procedures of Section 8.2; provided, however, that, notwithstanding any other provision of this Agreement, PHMD shall have sole control over all Tax Proceedings that are disclosed on the Disclosure Letter hereto, and all Tax Proceedings with respect to the Foreign Subsidiary where the applicable Tax Returns are not filed by a Foreign Subsidiary separately from PHMD or its Affiliates, and neither Purchaser nor any of its Affiliates shall have participation rights, or the ability to approve settlements of, such Tax Proceedings, and Purchaser shall promptly cause PHMD to receive all authorizations necessary to conduct and dispose of such Tax Proceedings, provided however, that no settlement of such Tax Proceedings shall entered into without the prior written consent of the Purchaser (not to be unreasonably withheld or delayed) if the settlement has an adverse tax effect on Purchaser or its Affiliates (including the Foreign Subsidiary) for taxable periods (or portions thereof) beginning after the Closing Date or results in a Tax liability for which Purchaser would not be fully indemnified by PHMD under this Agreement.

Section 9.2 Tax Indemnification. PHMD shall indemnify the Purchaser Indemnified Persons and hold them harmless from and against (i) all Taxes of the Foreign Subsidiary for the Pre-Closing Tax Period (other than Taxes attributable to extraordinary transactions undertaken on the Closing Date at the direction of Purchaser), (ii) all Taxes of Seller Companies or any Affiliates thereof (other than the Foreign Subsidiary), including any liability for Taxes allocable to or arising out of the Business or ownership of the Transferred Assets for any Pre-Closing Tax Period and including all Taxes incurred by the Seller Companies or any Affiliates thereof (other than the Foreign Subsidiary) due to the conveyance by PHMD and its Affiliates of the Transferred Assets under this Agreement); and (iii) all Taxes that are the responsibility of Sellers pursuant to Section 5.6(b); provided, however, that in the case of clauses (i), (ii) and (iii) above, PHMD shall be liable only to the extent that such Taxes are in excess of the amount, if any, taken into account as a liability in determining the Working Capital on the Closing Date as finally determined under Section 2.5. PHMD's obligation to indemnify and hold harmless Purchaser and each Purchaser Affiliate under this Section 9.2 shall survive until sixty (60) days following the expiration of the statute of limitations applicable to the underlying Tax (giving effect to any waiver, mitigation or extension of the subject statute of limitations); provided, however, that if notice of a claim shall have been timely given to PHMD under Section 8.2 or Section 9.1(b) on or prior to such survival termination date, PHMD's obligation to indemnify and hold harmless the Purchaser Indemnified Persons in respect of such claim shall survive beyond such date until such claim for indemnification has been satisfied or otherwise resolved. Any amounts paid or payable under this Section 9.2 shall be without duplication with amounts otherwise payable under this Agreement.

Section 9.3 Straddle Period. In the case of any Taxable Period that includes (but does not end on) the Closing Date (a "Straddle Period"), the amount of any Taxes for the Pre-Closing Tax Period shall be determined as follows:

(a) In the case of Taxes based upon income, gross receipts (such as sales taxes) or specific transactions such as the sale or other transfer of property and payroll, the amount of Taxes attributable to any Pre-Closing Tax Period shall be determined by closing the books of the relevant Seller Company as of the end of the Closing Date.

(b) In the case of Taxes imposed on a periodic basis (such as real or personal property Taxes), the amount of Taxes attributable to any Pre-Closing Tax Period shall be equal to the amount of Taxes for such Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Pre-Closing Tax Period included in the Straddle Period and the denominator of which is the total number of days in the Straddle Period.

Section 9.4 Responsibility for Filing Tax Returns for Periods through Closing Date.

(a) PHMD shall prepare all Tax Returns of the Foreign Subsidiary for all Taxable Periods ending on or before the Closing Date in a manner consistent with past practice of the Foreign Subsidiary, unless otherwise required under applicable Legal Requirements. PHMD shall provide Purchaser with drafts of such Tax Returns (along with supporting workpapers and schedules) within sixty (60) days of the due date therefor (including timely requested extensions), and Purchaser shall be allowed to review such Tax Returns and provide PHMD with comments thereto, with PHMD to accept all reasonable comments provided by Purchaser within thirty (30) days of the receipt of the original or revised draft (as applicable), and with such Tax Returns, as finally agreed between the Parties, to then be filed by the Party legally required to file such Tax Returns. Notwithstanding the foregoing, in the case of a Tax Return that is due within thirty (30) days after the Closing Date (including extensions thereof), PHMD shall provide a copy of such Tax Return (along with supporting workpapers and schedules) and the Purchaser shall review and comment, in each case as soon as practical before the filing due date (including extensions). Purchaser shall cause the Foreign Subsidiary to timely file returns as finally agreed to. Without duplication for amounts otherwise paid under Section 8.1(a) or Section 9.2. PHMD shall pay all Taxes shown due and payable on such Tax Returns to the extent that the amount of such Taxes exceed the amount, if any, of such Taxes that were taken into account as a liability in determining the Working Capital on the Closing Date as finally determined under Section 2.5.

(b) Purchaser shall prepare all Tax Returns of the Foreign Subsidiary for Straddle Periods in a manner consistent with past practice of the Foreign Subsidiary, unless otherwise required under applicable Legal Requirements. Purchaser shall provide PHMD with drafts of such Tax Returns (along with supporting workpapers and schedules) within sixty (60) days of the due date therefor (including timely requested extensions), and PHMD shall be allowed to review such Tax Returns and provide Purchaser with comments thereto, with Purchaser to accept all reasonable comments provided by PHMD within thirty (30) days of the receipt of an original or revised draft (as applicable). Notwithstanding the foregoing, in the case of a Tax Return that is due within thirty (30) days after the Closing Date or the Taxable Period to which it relates (including extensions thereof), the Purchaser shall provide a copy of such Tax Return (along with supporting workpapers and schedules) and PHMD shall review and comment, in each case as soon as practical before the filing due date (including extensions). PHMD shall reimburse Purchaser for all Taxes shown due and payable on such Tax Returns that are allocable to the Pre-Closing Tax Period no later than three (3) Business Days prior to the due date of the applicable Tax Return, to the extent that the Taxes so allocated exceed the amount, if any, of such Taxes that were taken into account as a liability in determining the Working Capital on the Closing Date as finally determined under Section 2.5.

Section 9.5 Amended Returns and Retroactive Elections. Under otherwise required under applicable Legal Requirements, Purchaser shall not, and shall not cause or permit the Foreign Subsidiary to, (i) amend or revoke any Tax Returns filed with respect to any Taxable Period ending on or before the Closing Date or with respect to any Straddle Period, or (ii) make any Tax election that has retroactive effect to any such Taxable Period or Straddle Period, in each such case without the prior written consent of PHMD (not to be unreasonably withheld or delayed).

Section 9.6 Refunds and Tax Benefits. Any Tax refunds of Taxes of the Foreign Subsidiary that are received by Purchaser or the Foreign Subsidiary, and any amounts credited against Tax of the Foreign Subsidiary to which Purchaser or the Foreign Subsidiary become entitled, allocable to the Pre-Closing Tax Period shall be for the account of PHMD, (excluding any refund or credit attributable to any loss in a tax year (or portion of a Straddle Period) beginning after the Closing Date applied (e.g., as a carryback) to income in the Pre-Closing Tax Period), and Purchaser shall pay over or cause to be paid over to PHMD any such refund or the amount of any such credit (net of any Taxes and reasonable expenses of Purchaser or the Foreign Subsidiary attributable to such refund or credit) within fifteen (15) days after receipt or entitlement thereto; provided, however, Purchaser shall not be required to pay over to PHMD any such refund or the amount of any such credit up to the amount of any such refund or credit taken into account in determining the Working Capital on the Closing Date as finally determined under Section 2.5.

Section 9.7 Purchase Price Allocations. The Parties agree that the Purchase Price (plus other relevant items) shall be allocated in accordance with Section 1060 of the Code among the Transferred Assets for all Tax purposes as shown on the allocation schedule (the "Allocation Schedule"). A draft of the Allocation Schedule shall be prepared by Purchaser and delivered to PHMD within sixty (60) days following the Closing Date. If, within forty-five (45) days after the receipt of the Allocation Schedule by PHMD, PHMD notifies Purchaser in writing that PHMD objects to one or more items reflected in the Allocation Schedule, PHMD and Purchaser shall negotiate in good faith to resolve such dispute; provided, however, that if PHMD and Purchaser are unable to resolve any dispute with respect to the Allocation Schedule within thirty (30) days following Purchaser's receipt of any such notice of objection, each of Purchaser and PHMD may prepare and shall use (and shall cause its Affiliates to use) its own separate purchase price allocation (each such allocation, a "Separate Allocation") in connection with the preparation and filing of all Tax Returns, and Purchaser shall have no liability to PHMD, and PHMD shall have no liability to Purchaser, for any Taxes that may be imposed by any Taxing Authority to the extent that such Tax arises as a result of the inconsistencies between the Separate Allocations. If no written objection is delivered by PHMD to Purchaser within the forty-five (45) day period after PHMD's receipt of the Allocation Schedule, the Allocation Schedule as prepared by Purchaser shall deemed to be accepted by PHMD and shall be shall be conclusive and binding upon the Parties. The Parties shall file (and shall cause their Affiliates to file) all Tax Returns (including amended returns and claims for refund) in a manner consistent with the Allocation Schedule if the Allocation is agreed to (or deemed agreed to), as the case may be pursuant to the procedures set forth in this Section 9.7. Any adjustments to the Purchase Price pursuant to Section 8.5 shall be allocated in a manner consistent with the Allocation Schedule (if the Allocation Schedule is being used pursuant to the provisions of this Section 9.7).

Section 9.8 Tax Sharing Agreements. PHMD shall cause all Tax Sharing Agreements between the Foreign Subsidiary, on the one hand, and the Sellers (or any other Person) to be terminated effective on the Closing.

Section 9.9 Tax Clearance Certificates. Purchaser acknowledges that the Seller Companies and their Affiliates have not taken, and do not intend to take, any action required to comply with any applicable bulk sale or bulk transfer laws or similar laws and hereby waives compliance therewith; it being understood that any liabilities arising out of the failure of the Sellers to comply with the requirements and provisions of any such Laws in any jurisdiction shall not limit Purchaser's rights under Section 9.2.

ARTICLE X

MISCELLANEOUS

Section 10.1 Confidentiality. On and after the Closing, Purchaser shall (and shall cause its Affiliates to) maintain the confidentiality of all confidential or proprietary information of the Sellers and agrees not to, directly or indirectly, disclose any such confidential or proprietary information except to the extent that disclosure of any portion thereof is required by Legal Requirement or determined to be necessary to comply with any Legal Requirement or to the extent the information becomes generally available to the public other than as a result of disclosure by Purchaser or its Affiliates. On and after the Closing, PHMD shall (and shall cause its Affiliates to) maintain the confidentiality of all confidential or proprietary information of Purchaser and agree not to, directly or indirectly, disclose any such confidential or proprietary information except to the extent that disclosure of any portion thereof is required by Legal Requirement or determined to be necessary to comply with any Legal Requirement or to the extent the information becomes generally available to the public other than as a result of disclosure by PHMD or its Affiliates. For the avoidance of doubt, upon the Closing, information relating to the Business is not confidential or proprietary information of the Sellers.

Section 10.2 Consent to Amendments. This Agreement may be amended or modified, and any provisions of this Agreement may be waived, in each case upon the approval, in writing, executed by, each of the Parties. No other course of dealing between the Parties or any delay in exercising any rights pursuant to this Agreement shall operate as a waiver of any rights of any Party.

Section 10.3 Entire Agreement. This Agreement, including the Disclosure Letter attached hereto, and the other Transaction Documents constitute the entire agreement among the Parties with respect to the matters covered hereby and supersedes all previous written, oral or implied understandings among them with respect to such matters, including, without limitation, that certain Letter of Intent dated as of April 29, 2015 by and between PHMD and Purchaser, which is hereby terminated and no longer of any further force or effect.

Section 10.4 Successors and Assigns. Except as otherwise expressly provided in this Agreement, all covenants and agreements set forth in this Agreement by or on behalf of the Parties shall bind and inure to the benefit of the respective successors and permitted assigns of the Parties, whether so expressed or not, except that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by Purchaser (on the one hand), or PHMD (on the other hand) without the prior written consent of PHMD or the Purchaser, as applicable. Any attempted assignment without such consent shall be null and void.

Section 10.5 Governing Law; Consent to Jurisdiction; Venue; Waiver of Jury Trial. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF NEW YORK FOR CONTRACTS ENTERED INTO AND TO BE PERFORMED IN SUCH STATE WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND OF ANY NEW YORK STATE COURT SITTING IN THE COUNTY OF NEW YORK, STATE OF NEW YORK FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.6 No Additional Representations; Disclaimer.

(a) Purchaser acknowledges and agrees that neither Seller nor any of their respective Representatives, or any other Person acting on behalf of either Seller, or any of their respective Representatives, has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Business or the Transferred Assets, except as expressly set forth in this Agreement or as and to the extent required by this Agreement to be set forth in the Disclosure Letter. Purchaser further agrees that neither Seller, nor any of their direct or indirect Representatives (or any of their directors, officers, employees, members, managers, partners, agents or otherwise), will have or be subject to any liability to Purchaser resulting from the distribution to Purchaser, or Purchaser's use of, any such information, and any information, document or material made available to Purchaser or its Representatives in certain "data rooms" and online "data sites," management presentations, management interviews, or any other form in expectation or anticipation of the transactions contemplated by this Agreement.

(b) Purchaser acknowledges and agrees that, except for the representations and warranties of PHMD expressly set forth in Article III hereof, the Transferred Assets are being acquired AS IS WITHOUT ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR INTENDED USE OR ANY OTHER EXPRESSED OR IMPLIED WARRANTY. Purchaser acknowledges and agrees that it is consummating the transactions contemplated by this Agreement and the other Transaction Documents without relying on any representation or warranty, express or implied, whatsoever by the Sellers or any of their Representatives, except for the representations and warranties of PHMD expressly set forth in Article III hereof.

(c) In connection with Purchaser's investigation of the Business, Purchaser has received, directly or indirectly, through its Representatives, from or on behalf of the Sellers or their Representatives, certain projections, including projected statements of operating revenues, income from operations, and cash flows of the Business (and the business transactions and events underlying such statements) and certain business plan information, projections, presentations, predictions, calculations, estimates and forecasts of the Business and other similar data. Purchaser acknowledges that there are uncertainties inherent in attempting to make such estimates, projections, forecasts, plans, statements, predictions, presentations, calculations and other similar data, that Purchaser is well aware of such uncertainties, that Purchaser is making its own evaluation of the adequacy and accuracy of all estimates, projections, forecasts, plans, statements, calculations, presentations, predictions and other similar data so furnished to it (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, plans, statements, calculations, predictions and other similar data), and that neither Purchaser, nor any Purchaser Indemnified Person, shall have any claim under any circumstances against either Seller or any other Person with respect thereto or arising therefrom. Accordingly, the Sellers make no representations or warranties whatsoever, to Purchaser or any other Person, with respect to such estimates, projections, forecasts, plans, statements, calculations, presentations, predictions and other similar data (including the reasonableness of the assumptions underlying such projections, forecasts, plans, statements, calculations, presentations, predictions and other similar data) and no such Person shall be entitled to rely on such estimates, projections, forecasts, plans, statements, calculations, presentations, predictions and other similar data for any purpose, including in connection with the transactions contemplated by this Agreement or the financing thereof.

(d) In no event shall any of the provisions of Section 10.6(a) through Section 10.6(c) be deemed to modify, qualify amend or otherwise affect in any manner any of the representations and warranties of PHMD in Article III of this Agreement, and Purchaser hereby reserves any and all rights that it may have with respect the breach or inaccuracy thereof, subject to the other limitations set forth in this Agreement.

Section 10.7 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand, (b) sent by facsimile, or (c) sent by mail, certified or registered mail with postage prepaid or by a nationally recognized next-day or overnight delivery service, in each case to the appropriate addresses and facsimile numbers set forth below (or to such other addresses or facsimile numbers as a Party may designate by notice to the other Parties). All such notices, consents, waivers and other communications shall be deemed to have been given as follows: (x) if delivered by hand, on the day of such delivery, if prior to 5:00 p.m., (y) if by mail, certified or registered mail, next-day or overnight delivery, on the day delivered, and (z) if by facsimile, on the Business Day on which confirmation of successful transmission is received by the sender.

If to the Sellers to:

PhotoMedex, Inc.
100 Lakeside Drive, Suite 100
Horsham, Pennsylvania 19044
Facsimile: (215) 619-3209
Attention: President

with a copy, which shall not constitute notice to the Sellers, to:

Proskauer Rose LLP
Eleven Times Square
New York, New York 10036
Facsimile: (212) 969-2900
Attention: Paul I. Rachlin, Esq.
Michael E. Callahan, Esq.

If to Purchaser, to:

MELA Sciences, Inc.
50 South Buckhout Street, Suite 1
Irvington, New York 10533
Facsimile: (914) 591-3701
Attention: Chief Executive Officer

with a copy, which shall not constitute notice to Purchaser, to:

Duane Morris LLP
30 South 17th Street
Philadelphia, Pennsylvania 19103-4196
Facsimile: (215) 689-4382
Attention: Kathleen M. Shay, Esq.

Section 10.8 Disclosure Letter. The Disclosure Letter constitutes a part of this Agreement and is incorporated into this Agreement for all purposes as if fully set forth herein. Each disclosure made in the Disclosure Letter shall be organized by reference to the Section of this Agreement to which it applies; provided, that disclosures in the Disclosure Letter with respect to a particular representation or warranty in Article III of this Agreement shall be deemed to be disclosures made with respect to all representations and warranties in Article III of this Agreement with respect to which such disclosure reasonably relates if it is readily apparent that such disclosure would be applicable thereto. Except to the extent that the context otherwise explicitly requires, the disclosure of any item or matter in the Disclosure Letter shall not in and of itself be taken as an indication of the materiality thereof or the level of materiality that is applicable to any representation or warranty set forth herein.

Section 10.9 Counterparts. The Parties may execute this Agreement in two or more counterparts (no one of which need contain the signatures of all Parties), each of which shall be an original and all of which together shall constitute one and the same instrument.

Section 10.10 Time is of the Essence. Purchaser and the Sellers hereby expressly acknowledge and agree that time is of the essence for each and every provision of this Agreement.

Section 10.11 No Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, no Person which is not a party shall have any right or obligation pursuant to this Agreement.

Section 10.12 No Strict Construction. Each Party acknowledges that this Agreement has been prepared jointly by the Parties, and shall not be strictly construed against any Party.

Section 10.13 Headings. The headings used in this Agreement are for the purpose of reference only and shall not affect the meaning or interpretation of any provision of this Agreement.

Section 10.14 Waiver of Conflict. Each Party acknowledges that Proskauer Rose LLP ("Proskauer"), counsel for the Seller Companies, has in the past performed, is now performing and may continue to perform legal services for the Sellers and that, upon the Closing, Proskauer's representation of the Foreign Subsidiary (but not the Sellers) shall terminate. Accordingly, each Party hereby acknowledges that Proskauer may continue to represent the Sellers in any and all matters related to this Agreement or the transactions contemplated hereby, including any matters that are or may become adverse to the interests of the Foreign Subsidiary and including claims arising under this Agreement. Effective upon the Closing, Purchaser, on its own behalf and on behalf of the Foreign Subsidiary, hereby waives any actual or potential conflict of interest that exists or that may exist including, without limitation, any conflict that exists or may arise by virtue of Proskauer's possession of any information concerning the Foreign Subsidiary as a result of Proskauer's representation of the Sellers or any other Person in any matter involving this Agreement or any other Transaction Documents.

* * * * *

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

PURCHASER:

MELA SCIENCES, INC.

By: _____
Name:
Title:

SELLERS:

PHOTOMEDEX, INC.

By: _____
Name:
Title:

PHOTOMEDEX TECHNOLOGY, INC.

By: _____
Name:
Title:

EXHIBIT 10.5

WARRANT AMENDMENT AGREEMENT

MELA SCIENCES, INC.

THIS WARRANT AMENDMENT AGREEMENT (the "Agreement") is entered into as of June 22, 2015, by and among MELA Sciences, Inc., a Delaware corporation (the "Company") and the other parties which are signatories hereto (individually, an "Investor" and collectively, the "Investors").

In consideration of the mutual premises and covenants contained herein and in the Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the "Purchase Agreement"), dated June 22, 2015, among the Company and the purchasers signatory thereto.

Section 2. Existing Warrants. Each of the Investors is a party to one or more warrant agreements with the Company, all of which are listed on Exhibit A hereto, each of which is herein referred to as an "Existing Warrant" and collectively, the "Existing Warrants").

Section 3. Amendment to Existing Warrants. Each Existing Warrant shall be amended in a form substantially consistent with the form of warrant attached hereto as Exhibit B including the terms set forth below (such warrants, as amended, the "Amended Warrants") the exercise price per share under the Amended Warrants shall be $0.75, subject to full ratchet anti-dilution adjustments as provided in the attached form. Such Amended Warrants shall be effective upon receipt of Shareholder Approval notwithstanding the requirement to deliver originally executed Amended Warrants pursuant to Section 4 and the holders of Existing Warrants may exercise them upon the terms of the Amended Warrants immediately upon receipt of Shareholder Approval.

Section 4. Amended Warrants. Within thirty (30) days of the date hereof, the Company and the Investors shall agree on the final form of Amended Warrant in lieu of each of the Existing Warrants. Within three (3) day of the receipt of Shareholder Approval, the Company shall deliver originally executed Amended Warrants to each Investor. The Company shall update the warrant register for each of the Existing Warrants to reflect the adoption of the Amended Warrants.

Section 5. Miscellaneous.

a) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

b) Notices. Any notice, request or other document required or permitted to be given or delivered to an Investor or the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

c) Amendment. This Agreement may be modified or amended or the provisions hereof waived with the written consent of the Company and each Investor.

d) Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

e) Headings. The headings used in this Agreement are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Agreement.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the parties hereto have caused this Warrant Amendment Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

MELA SCIENCES, INC.

By: _____

Michael R. Stewart
Chief Executive Officer

[Signature Page to Warrant Amendment Agreement]

[INVESTOR SIGNATURE PAGES TO MELA WARRANT AMENDMENT AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Warrant Amendment Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Investor: _____

Signature of Authorized Signatory of Investor: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Exhibit A

List of Existing Warrants

Issue Date	Type	Holder	# of warrants		Current Exercise Price	Expiration
10/31/2013		Sabby	685,715	$	8.50	4/30/2019
2/5/2014		Sabby	897,298	$	7.40	2/5/2019
2/5/2014		Broadfin	432,433	$	7.40	2/5/2019
7/24/2014	Series A	Sabby	3,020,651	$	2.45	7/24/2019
7/24/2014	Series A	Broadfin	1,267,849	$	2.45	7/24/2019
7/24/2014	Series B	Sabby	3,235,867	$	2.45	1/24/2016
7/24/2014	Series B	Broadfin	1,559,454	$	2.45	1/24/2016
Total Warrants			11,099,267			

Exhibit B

Form of Amended Warrant

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

COMMON STOCK PURCHASE WARRANT

MELA SCIENCES, INC.

Warrant No.: ____ Initial Exercise Date: [●]
Warrant Shares: _____

THIS COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to the close of business on the five (5) year anniversary of the Initial Exercise Date (the "Termination Date") but not thereafter, to subscribe for and purchase from MELA Sciences, Inc., a Delaware corporation (the "Company"), up to [●] shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (as amended, the "Purchase Agreement"), dated July 21, 2014, among the Company and the purchasers signatory thereto.

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed facsimile copy of the Notice of Exercise form annexed hereto and within three (3) Trading Days of the date said Notice of Exercise is received by the Company, the Company shall have received payment of the aggregate Exercise Price of the shares thereby purchased by wire transfer or cashier's check drawn on a United States bank or, if available, pursuant to the cashless exercise procedure specified in Section 2(c) below. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date the final Notice of Exercise is received by the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise form within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of the Common Stock under this Warrant shall be $0.75, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If at any time after the 6 month anniversary of the Initial Exercise Date, there is no effective Registration Statement registering, or no current prospectus available for, the resale of the Warrant Shares by the Holder, then this Warrant may only be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = the VWAP on the Trading Day immediately preceding the date on which Holder elects to exercise this Warrant by means of a "cashless exercise," as set forth in the applicable Notice of Exercise;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised, and the holding period of the Warrants being exercised may be tacked on to the holding period of the Warrant Shares. The Company agrees not to take any position contrary to this Section 2(c).

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants issued pursuant to the Purchase Agreement then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Notwithstanding anything herein to the contrary, on the Termination Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. Warrant Shares purchased hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's prime broker with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144, and otherwise by physical delivery to the address specified by the Holder in the Notice of Exercise by the end of the day on the date that is three (3) Trading Days after the latest of (A) the receipt by the Company of the Notice of Exercise and (B) surrender of this Warrant (if required) (such date, the "Warrant Share Delivery Date"). The Warrant Shares shall be deemed to have been issued, and Holder or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Warrant has been exercised, with payment to the Company of the Exercise Price (or by cashless exercise, if permitted) and all taxes required to be paid by the Holder, if any, pursuant to Section 2(d)(vi) prior to the issuance of such shares, having been paid. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination and shall have no liability for exercise of the Warrant that are not in compliance with the Beneficial Ownership Limitation. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

f) Issuance Restrictions. If the Company has not obtained Shareholder Approval, the Company may not issue upon exercise of this Warrant (1) any shares until six months from the Initial Exercise Date and (2) from and after six months from the Initial Exercise Date (or until such later date if the Company continues to seek shareholder approval at the request of the holders of Warrants), a number of shares of Common Stock, which, when aggregated with any shares of Common Stock issued (i) pursuant to any Debentures issued pursuant to the Purchase Agreement (whether upon conversion or as payment of interest), and (ii) upon prior exercise of this or any other Warrant issued pursuant to the Purchase Agreement, would exceed 1,622,612, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of the Purchase Agreement (such number of shares, the "Issuable Maximum"). The Holder and the holders of the other Debentures and Warrants issued pursuant to the Purchase Agreement shall be entitled to a portion of the Issuable Maximum equal to the quotient obtained by dividing (x) the Holder's original Subscription Amount by (y) the aggregate original Subscription Amount of all holders pursuant to the Purchase Agreement. In addition, the Holder may allocate its pro-rata portion of the Issuable Maximum among Warrants and Debentures held by it in its sole discretion. Such portion shall be adjusted upward ratably in the event a Purchaser (other than the Holder) no longer holds any Warrants or Debentures and the amount of shares issued to such Purchaser pursuant to its Warrants and Debentures was less than such Purchaser's pro-rata share of the Issuable Maximum.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Equity Sales. If the Company or any Subsidiary thereof, as applicable, at any time while this Warrant is outstanding, shall sell or grant any option to purchase, or sell or grant any right to reprice, or otherwise dispose of or issue (or announce any offer, sale, grant or any option to purchase or other disposition) any Common Stock or Common Stock Equivalents, at an effective price per share less than the Exercise Price then in effect (such lower price, the "Base Share Price" and such issuances collectively, a "Dilutive Issuance") (it being understood and agreed that if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive shares of Common Stock at an effective price per share that is less than the Exercise Price, such issuance shall be deemed to have occurred for less than the Exercise Price on such date of the Dilutive Issuance at such effective price), then simultaneously with the consummation of each Dilutive Issuance the Exercise Price shall be reduced and only reduced to equal the Base Share Price and the number of Warrant Shares issuable hereunder shall be increased such that the aggregate Exercise Price payable hereunder, after taking into account the decrease in the Exercise Price, shall be equal to the aggregate Exercise Price prior to such adjustment. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustments shall be made, paid or issued under this Section 3(b) in respect of an Exempt Issuance. The Company shall notify the Holder, in writing, no later than the Trading Day following the issuance or deemed issuance of any Common Stock or Common Stock Equivalents subject to this Section 3(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 3(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Warrant Shares based upon the Base Share Price regardless of whether the Holder accurately refers to the Base Share Price in the Notice of Exercise. If the Company enters into a Variable Rate Transaction, despite the prohibition thereon in the Purchase Agreement, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion or exercise price at which such securities may be converted or exercised. Notwithstanding anything herein to the contrary, this Section 3(b) shall terminate and be of no further force or effect after the later of (i) the one year anniversary of the Initial Exercise Date, and (ii) the earlier of (A) six months after the effective date of the registration statement registering all of the shares of Common Stock required to be registered pursuant to the Registration Rights Agreement (in the event multiple registration statements are required to register all such shares, then this provision shall refer to the last of such registration statements to become effective), and (B) six months after the date that all of the Warrant Shares and shares of Common Stock issued or issuable under the Debentures are freely tradable under Rule 144 without the requirement to be in compliance with the current public information requirements thereunder.

c) Subsequent Rights Offerings. If the Company, at any time while the Warrant is outstanding, shall issue rights, options or warrants to all holders of Common Stock (and not to the Holder) entitling them to subscribe for or purchase shares of Common Stock at a price per share less than the Exercise Price on the record date mentioned below, then the Exercise Price shall be reduced to equal to the Base Share Price. Such adjustment shall be made whenever such rights, options or warrants are issued, and shall become effective immediately after the record date for the determination of stockholders entitled to receive such rights, options or warrants.

d) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, shall distribute to all holders of Common Stock (and not to the Holder) evidences of its indebtedness or assets (including cash and cash dividends) or rights or warrants to subscribe for or purchase any security other than the Common Stock (which shall be subject to Section 3(b)), then in each such case the Exercise Price shall be adjusted by multiplying the Exercise Price in effect immediately prior to the record date fixed for determination of stockholders entitled to receive such distribution by a fraction of which the denominator shall be the VWAP determined as of the record date mentioned above, and of which the numerator shall be such VWAP on such record date less the then per share fair market value at such record date of the portion of such assets or evidence of indebtedness or rights or warrants so distributed applicable to one outstanding share of the Common Stock as determined by the Board of Directors in good faith. In either case the adjustments shall be described in a statement provided to the Holder of the portion of assets or evidences of indebtedness so distributed or such subscription rights applicable to one share of Common Stock. Such adjustment shall be made whenever any such distribution is made and shall become effective immediately after the record date mentioned above.

e) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) or Section 2(f) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(e) pursuant to written agreements which are exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly mail to the Holder a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment..

ii. Notice to Allow Exercise by Holder. If, prior to the earlier of (i) the Termination Date and (ii) the date on which this Warrant has been exercised in full, (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be mailed to the Holder at its last address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to mail such notice or any defect therein or in the mailing thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable securities laws and the conditions set forth in Section 4(d) hereof and to the provisions of Sections 4.1 and 5.7 of the Purchase Agreement, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Warrant full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Initial Exercise Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

e) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, comply with the transfer restrictions in the Purchase Agreement.

Section 5. Miscellaneous.

f) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

g) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

h) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

i) Authorized Shares. The Company covenants that it will use its best efforts to promptly seek shareholder approval for an amendment to its certificate of incorporation to increase the number of authorized shares of Common Stock to permit the exercise of this Warrant in its entirety and, at all times thereafter, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

j) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

k) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

l) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies, notwithstanding the fact that all rights hereunder terminate on the Termination Date. If the Company fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

m) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

n) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

o) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

p) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

q) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

r) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

s) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

MELA SCIENCES, INC.

By: _____

Michael R. Stewart
Chief Executive Officer

[Signature Page to Warrant]

NOTICE OF EXERCISE

TO: MELA SCIENCES, INC.

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ [if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

_____

(4) Accredited Investor. The undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____
Signature of Authorized Signatory of Investing Entity: _____
Name of Authorized Signatory: _____
Title of Authorized Signatory: _____
Date: _____

ASSIGNMENT FORM

(To assign the foregoing warrant, execute
this form and supply required information.
Do not use this form to exercise the warrant.)

FOR VALUE RECEIVED, [____ all of or [_____ shares of the foregoing Warrant and all rights evidenced thereby are hereby assigned to

_____ whose address is

_____.

_____

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

_____

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

[Signature Page to Warrant]

Exhibit 99.1

MELA Sciences Acquires XTRAC and VTRAC Businesses from PhotoMedex, Inc.

Becomes a Multi-Product Medical Dermatology Business

Conference Call at 8:30am Eastern Time Today

Irvington, NY, June 23, 2015 — MELA Sciences, Inc. (NASDAQ: MELA), today announced that it has signed and completed the purchase of the XTRAC and VTRAC Dermatology business from PhotoMedex, Inc. for $42.5 million in cash and the assumption of certain business-related liabilities. The purchase price includes all of the accounts receivable, inventory and fixed and intangible assets of the businesses. To fund the purchase price of the transaction, the Company has issued senior secured notes and convertible debentures equal to the transaction purchase price to certain investors. The XTRAC and VTRAC businesses generated $30.6 million in revenues in 2014.

Michael R. Stewart, President and CEO of MELA Sciences, stated, "This is a transformational event for MELA Sciences. As a result of this acquisition, MELA becomes a multi-product company with a single salesforce focused on meeting the needs of dermatologists for the diagnosis and treatment of serious dermatological conditions. The XTRAC laser in particular provides us with a recurring source of revenue that has been growing significantly over the past few years and is expected to generate sufficient cash flow to fund our ongoing operations beginning this year. This should enable us to continue our current commercialization efforts while growing the XTRAC and VTRAC businesses globally.

Added MELA Sciences Chairman, Jeffrey F. O'Donnell, Sr., "I am thrilled we have completed this acquisition as it transforms MELA Sciences into a sustainable commercial enterprise, providing it with a sales infrastructure, a synergistic product line and a positive-cash flow business platform on which to build a leading franchise in medical dermatology. Given Mike Stewart's previous experience running the XTRAC and VTRAC businesses at PhotoMedex, we look forward to a smooth transition with him as CEO of the combined businesses."

XTRAC is an ultraviolet light excimer laser system that has become a widely utilized treatment among dermatologists for the treatment of psoriasis, vitiligo and other skin diseases. The VTRAC Excimer Lamp system, offered internationally, provides targeted therapeutic efficacy demonstrated by excimer technology with the simplicity of design and reliability of a lamp system. In 2014, the acquired businesses generated $30.6 million in revenues, representing year-over-year growth of 41% and a gross profit of 60.1%. As of March 31, 2015, there were 640 installed XTRAC systems in the United States, up from 527 at the end of March 2014. There are approximately 7.5 million people in the U.S. and up to 125 million people worldwide suffering from psoriasis, and 1% to 2% of the world's population have vitiligo. In 2014, over 300,000 XTRAC laser treatments were performed on approximately 19,000 patients in the United States.

To finance the transaction, the Company entered into a securities purchase agreement with institutional investors in connection with a private placement of $42.5 million aggregate principal amount of senior secured notes and convertible debentures and warrants to purchase 3.0 million shares of common stock at an exercise price of $0.75 per share. The Company sold $10.0 million principal amount of senior secured notes bearing interest at 9% per year, with a maturity date of the earlier of 30 days after the Company obtains stockholder approval of stock issuances under the debentures and the warrants or November 30, 2015. The Company also issued $32.5 million principal amount of senior secured convertible debentures that, subject to certain ownership limitations and stockholder approval conditions, will be convertible into approximately 43.3 million shares of common stock at an initial conversion price of $0.75 per share. The debentures bear interest at the rate of 2.25% per year, and, unless previously converted, will mature on the five-year anniversary of the date of issuance. The Company's obligations under the notes and debentures are secured by a first priority lien on all of the Company's assets. Under the terms of the debentures and the warrants, the issuances of shares of the common stock upon conversion of the debentures and upon exercise of the warrants are subject to stockholder approval of such issuances and an amendment to the Company's certificate of incorporation to increase the Company's authorized shares of common stock. Upon receipt of stockholder approval, the Company has also agreed to reprice outstanding warrants held by certain investors to reduce the exercise price to $0.75 per share.

The notes, convertible debentures and warrants described above have not been registered under the Securities Act of 1933, as amended, and may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from such registration requirements. The securities were offered only to accredited investors. Pursuant to a registration rights agreement with the investors, the Company has agreed to file one or more registration statements with the SEC covering the resale of the shares of common stock issuable upon conversion of or in connection with the convertible debentures and upon exercise of the warrants.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy any of the securities described herein, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

The Company will also be providing slides with an overview of the transaction and discussion points. They will be available at http://melasciences.com/investors/home.

Conference Call Details:

Date:	Tuesday, June 23, 2015
Time:	8:30 am Eastern Time
Toll Free:	888-364-3109
International:	719-325-2455
Passcode:	6308822
Webcast:	http://public.viavid.com/player/index.php?id=114845

Replays, available through July 7, 2015

Toll Free:	877-870-5176
International:	858-384-5517
Replay PIN:	6308822

About MELA Sciences, Inc. (www.melasciences.com)

MELA Sciences is a medical technology company focused on the dermatology market. Through its acquisition of the XTRAC and VTRAC businesses, MELA Sciences markets those products for the treatment of psoriasis, vitiligo and other skin conditions. The Company is also in the early commercialization stages of the MelaFind® system, an innovative software-driven technology that provides additional information to dermatologists in the management of melanoma skin cancer.

Safe Harbor

This press release includes "forward-looking statements" within the meaning of the Securities Litigation Reform Act of 1995. These statements include but are not limited to the Company's plans, objectives, expectations and intentions and may contain words such as "will," "may," "seeks," and "expects," that suggest future events or trends. These statements, including the Company's ability to generate the anticipated revenue stream from the acquired business, the Company's ability to generate sufficient cash flow to fund the Company's ongoing operations beginning in 2015 or at any time in the future and the Company's ability to integrate and transition the acquired business effectively and build a leading franchise in medical dermatology, are based on the Company's current expectations and are inherently subject to significant uncertainties and changes in circumstances. Actual results may differ materially from the Company's expectations due to financial, economic, business, competitive, market, regulatory and political factors or conditions affecting the Company and the medical device industry in general, as well as more specific risks and uncertainties set forth in the Company's SEC reports on Forms 10-Q and 10-K. Given such uncertainties, any or all of these forward-looking statements may prove to be incorrect or unreliable. The Company assumes no duty to update its forward-looking statements and urges investors to carefully review its SEC disclosures available at www.sec.gov and www.melasciences.com.

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