

Chart Acquisition Corp.
Form SC 13D
July 25, 2014

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

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No.)*

CHART ACQUISITION CORP.
(Name of Issuer)

Common Stock (par value \$0.0001 per share)
(Title of Class of Securities)

16115113
(CUSIP Number)

David Sella Villa
Tempus Intermediate Holdings, LLC
133 Waller Mill Road, Suite 400
Williamsburg, VA 23185
(757) 243-8164

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

July 15, 2014
(Date of event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box:

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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CUSIP No. 16115113

1	Names of Reporting Person	Tempus Intermediate Holdings, LLC
2	Check the Appropriate Box if a Member of a Group	(a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/>
3	SEC Use Only	
4	Source of Funds	Not applicable
5	Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)	<input type="checkbox"/>
6	Citizenship or Place of Organization	Delaware
Number of 7	Sole Voting Power	-0-
Shares Beneficially 8	Shared Voting Power	1,766,2501
Owned by Reporting 9	Sole Dispositive Power	-0-
Person With 10	Shared Dispositive Power	-0-
11	Aggregate Amount Beneficially Owned By Each Reporting Person	1,766,2501
12	Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares	<input type="checkbox"/>
13	Percent of Class Represented Amount in Row (11)	18.1%1
14	Type of Reporting Person	OO

1 Beneficial ownership of the common stock referred to herein is being reported hereunder solely because Tempus Intermediate Holdings, LLC may be deemed to beneficially own such shares as a result of the Supporting Stockholder Agreement described in Item 3 and Item 5 hereof. Neither the filing of this statement on Schedule 13D nor any of its contents shall be deemed to constitute an admission by Tempus Intermediate Holdings, LLC that it is the beneficial owner of any of the common stock referred to herein for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, or for any other purpose, and such beneficial ownership is expressly disclaimed.

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CUSIP No. 16115113

1	Names of Reporting Person	John G. Gulbin III
2	Check the Appropriate Box if a Member of a Group	(a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/>
3	SEC Use Only	
4	Source of Funds	Not applicable
5	Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)	
6	Citizenship or Place of Organization	US
Number of 7	Sole Voting Power	-0-
Shares Beneficially 8	Shared Voting Power	1,766,2502
Owned by Reporting 9	Sole Dispositive Power	-0-
Person With 10	Shared Dispositive Power	-0-
11	Aggregate Amount Beneficially Owned By Each Reporting Person	1,766,2502
12	Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares	<input type="checkbox"/>
13	Percent of Class Represented Amount in Row (11)	18.1%2
14	Type of Reporting Person	IN

2 Beneficial ownership of the common stock referred to herein is being reported hereunder solely because John G. Gulbin III may be deemed to beneficially own such shares as a result of the Supporting Stockholder Agreement described in Item 3 and Item 5 hereof. Neither the filing of this statement on Schedule 13D nor any of its contents shall be deemed to constitute an admission by John G. Gulbin III that he is the beneficial owner of any of the common stock referred to herein for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, or for any other purpose, and such beneficial ownership is expressly disclaimed.

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CUSIP No. 16115113

1	Names of Reporting Person	Benjamin Scott Terry
2	Check the Appropriate Box if a Member of a Group	(a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/>
3	SEC Use Only	
4	Source of Funds	Not applicable
5	Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)	
6	Citizenship or Place of Organization	US
Number of 7	Sole Voting Power	-0-
Shares Beneficially 8	Shared Voting Power	1,766,2503
Owned by Reporting 9	Sole Dispositive Power	-0-
Person With 10	Shared Dispositive Power	-0-
11	Aggregate Amount Beneficially Owned By Each Reporting Person	1,766,2503
12	Check Box if the Aggregate Amount in Row (11) Excludes Certain Shares	<input type="checkbox"/>
13	Percent of Class Represented Amount in Row (11)	18.1%3
14	Type of Reporting Person	IN

3 Beneficial ownership of the common stock referred to herein is being reported hereunder solely because Benjamin Scott Terry may be deemed to beneficially own such shares as a result of the Supporting Stockholder Agreement described in Item 3 and Item 5 hereof. Neither the filing of this statement on Schedule 13D nor any of its contents shall be deemed to constitute an admission by Benjamin Scott Terry that he is the beneficial owner of any of the common stock referred to herein for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, or for any other purpose, and such beneficial ownership is expressly disclaimed.

Statement on Schedule 13D

under the
Securities Exchange Act of 1934, as amended

Item 1. Security and Issuer.

This statement on Schedule 13D relates to shares of common stock, \$0.0001 par value per share (“Common Stock”) of Chart Acquisition Corp. (the “Company”), whose principal executive offices are located at 75 Rockefeller Plaza, 14th Floor, New York, NY 10019.

Item 2. Identity and Background.

Tempus Intermediate Holdings, LLC, a Delaware limited liability company (“Tempus”), John G. Gulbin III (“Gulbin”) and Benjamin Scott Terry (“Terry”) are jointly filing this statement. Gulbin and Terry are currently the sole managers and members of Tempus Intermediate Holdings, LLC. Tempus, Gulbin and Terry are collectively referred to herein as the “Reporting Persons”. The Reporting Persons have entered into a Joint Filing Agreement, dated July 25, 2014, a copy of which is filed with this Schedule 13D as Exhibit 1, pursuant to which the Reporting Persons have agreed to file this statement on Schedule 13D jointly in accordance with the provisions on Rule 13d-1(k)(1) under the Securities and Exchange Act of 1934, as amended.

Tempus is a Delaware limited liability company formed for the purpose of effecting the transactions contemplated by the Equity Transfer and Acquisition Agreement (and related transaction documents) described in Item 4 below. Tempus’ principal offices are located at 133 Waller Miller Road, Suite 400, Williamsburg, VA 23185.

The names, citizenship, business address, present principal occupation or employment and the name and principal business address of any corporation or other organization in which such employment is conducted, of all the current managers and members of Tempus are set forth in Schedule A hereto and incorporated herein by reference. Tempus currently has no directors or executive officers.

None of the Reporting Persons and none of the persons listed on Schedule A has during the past five years been (i) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors); or (ii) a party to a civil proceeding of a judicial or administrative body of competent jurisdiction, as a result of which proceeding such person was or is subject to a judgment, decree or final order enjoining future violations of, prohibiting or mandating activities subject to, federal or state securities laws, or finding any violation with respect to such laws.

Item 3. Source and Amount of Funds or Other Consideration.

As described in Item 4 and Item 5, the shares of Common Stock to which this statement relates have not been purchased by the Reporting Persons. In connection with the Equity Transfer and Acquisition Agreement dated as of July 15, 2014 (the “ETAA”), by and among The Tempus Group Holdings, LLC (“Buyer”), Tempus, Gulbin and Terry and certain other persons to become members of Tempus in connection with transactions contemplated by the ETAA (collectively, the “Members”), Gulbin and Terry (acting together or individually as the Members’ Representative) (solely for purposes of Sections 1.3, 6.3, 6.5, 6.7, 6.11, 6.20, 6.21 and 8.6 and Articles II, IX, X, XI and XII), the Company and the Warrant Offerors named therein (the “Warrant Offerors”) (solely for purposes of Sections 6.14 and 6.15) (such parties collectively, the “ETAA Parties”), Tempus, Gulbin and Terry, along with Chart Acquisition Group LLC, The Chart Group, L.P., Christopher D. Brady, Joseph Wright and Cowen Overseas Investment LP (the “Stockholders”) entered into a Supporting Stockholder Agreement dated as of July 15, 2014 (the “SSA”) with respect to the voting of an aggregate of 1,766,250 shares of the Company’s Common Stock beneficially owned by the Stockholders with respect to the transactions contemplated by the ETAA described in Item 4.

The Reporting Persons have not paid, and do not expect to pay, additional consideration in connection with the execution and delivery of the SSA. For a description of the SSA, see Item 5 below, which description is incorporated herein by referred in response to this Item 3.

Item 4. Purpose of the Transaction.

As of July 15, 2014, the ETAA Parties entered into the ETAA, pursuant to which, among other things, the Members of Tempus will receive (i) membership interests (“Buyer Units”) in Buyer, the Company’s newly-formed, wholly-owned subsidiary and (ii) shares of Class B common stock of Company (the “Class B Shares”) in an amount equal to the Buyer Units issuable to each Member thereunder, in exchange for the transfer to Buyer of 100% of the membership interests of Tempus (the “Acquisition”), subject to the terms and conditions of the ETAA.

The Equity Transfer and Acquisition Agreement

Under the terms of the ETAA (and related transaction documents), the Members, who own all of the membership interests of Tempus, will receive (i) Buyer Units exchangeable (together with Class B Shares) into 10,000,000 shares of the Company’s Common Stock (after giving effect to the charter amendment described below, the “Class A Shares”, and subject to adjustment as provided in the ETAA), which would represent approximately 50.6% of the economic interest in Buyer and approximately 50.6% of the issued and outstanding Class A Shares upon full exchange thereof (assuming that none of the Company’s stockholders have exercised redemption rights prior to or in connection with the business combination, that none of the Company’s warrants have been exercised, and that there are no adjustments to the purchase price required by the terms of the ETAA) and (ii) an equal number of Class B Shares (which have voting rights but no other economic value). In exchange for the Company’s contribution to Buyer of the remaining balance of a trust account established for the benefit of the Company’s public stockholders (after giving effect to any stockholder redemptions prior to or concurrent with the consummation of the business combination and the satisfaction of certain other obligations of the Company), Buyer will issue to the Company a number of non-convertible Buyer Units equal to the number of issued and outstanding Class A Shares.

In exchange, Buyer will receive 100% of the membership interests of Tempus. The Class B Shares and Buyer Units held by the Members will be exchangeable into Class A Shares on the basis of one Class A Share for each Buyer Unit (together with accompanying Class B Share) tendered for exchange. Buyer will elect to be treated as a corporation for tax purposes. The ETAA provides that Tempus will have the option to change the structure of the transaction to an “Up-C” structure and have the Buyer elect to be treated as a partnership for tax purposes at any time before September 1, 2014. In addition, the transaction structure will automatically shift to an Up-C structure on or before August 15, 2014 upon delivery to Buyer of a tax analysis showing a level of tax exposure to the Members in excess of a specified threshold. In the event the transaction converts to an Up-C structure, the parties have agreed to, among other things, negotiate in good faith revised distribution provisions for Buyer’s operating agreement and other applicable revisions to the transaction documents.

The consummation of the transaction is subject to the satisfaction of certain conditions, including receipt of the Required Parent Stockholder Approval (as defined in the ETAA). Additionally, the consummation of the transaction is subject to Tempus effectuating a corporate reorganization pursuant to a Restructuring Agreement, dated as of July 15, 2014, by and among Tempus and certain of its affiliates (the “Reorganization”). A form of the Restructuring Agreement is attached as Exhibit D to the ETAA.

In addition, the consummation of the Acquisition is subject to the completion of the Warrant Offerors’ offer to purchase up to 3,750,000 warrants (subject to reduction as discussed below for warrants tendered in the Warrant Extension Tender Offer (as defined in “The Extension Proposal” below)) to purchase common stock of the Company at a purchase price of \$0.60 per warrant (the “Warrant Tender Offer”). The Warrant Offerors have deposited an aggregate

of \$2,250,000 with Continental Stock Transfer & Trust Company into a segregated escrow account pursuant to the terms of an escrow agreement (the “Escrow Agreement”), which funds will be used for the purchase of Company warrants validly tendered in the Warrant Tender Offer and the Warrant Extension Tender Offer.

The ETAA includes customary representations, warranties and covenants by the parties. The Company and Tempus have agreed, among other things, to operate their respective businesses in the ordinary course until the Acquisition is consummated. In addition, the Company and Tempus have agreed not to solicit or initiate certain discussions with third parties regarding other proposals to acquire (or be acquired by) any other person after the signing of the ETAA until consummation of the Acquisition and agreed to certain restrictions on their ability to respond to such proposals.

The ETAA includes customary termination provisions applicable to Tempus, the Buyer, the Members' Representative and the Company. Buyer and Tempus can jointly agree to terminate the ETAA at any time prior to the consummation of the Acquisition, and either party may terminate the ETAA if the closing has not occurred one hundred twenty days after the delivery to the Company of the audited financial statements of Tempus and its subsidiaries required to be delivered pursuant to the ETAA (the "Required Financial Statements"). In addition, Tempus will have the right to update its disclosure schedules to reflect certain information obtained in connection with the preparation of the Required Financial Statements. If Tempus exercises its right to update its disclosure schedules, the Buyer will have the right to terminate the ETAA or, if it does not terminate the ETAA, either waive or refuse to waive any of the matters disclosed in such update. If the Buyer does not terminate the ETAA and refuses to waive any of the matters disclosed in such update, Tempus will have the right to terminate the ETAA.

In the event that by the 90th day following date of the ETAA, either (i) the Required Financial Statements have not been delivered to the Company or (ii) the Reorganization has not been consummated, Buyer will have the right to terminate the ETAA.

The foregoing description of the ETAA does not purport to be complete and is qualified in its entirety by reference to the ETAA, a copy of which is filed as Exhibit 2 to this Schedule 13D and is incorporated herein by reference.

Upon consummation of the transactions contemplated by the ETAA, Gulbin and Terry, along with the other persons identified on Annex B to the ETAA will become officers and directors of the Company, until their respective successors are elected or appointed and qualified.

The ETAA has been included to provide investors and stockholders with information regarding its terms. It is not intended to provide any other factual information about the Company or Tempus. The ETAA contains representations and warranties that the parties made to and solely for the benefit of each other. The assertions embodied in the representations and warranties in the ETAA are qualified by information contained in the confidential disclosure letter that the Company and Tempus delivered in connection with signing the ETAA. Investors are not third-party beneficiaries under the ETAA and should not rely on such representations and warranties as characterizations of the actual state of facts or circumstances, since they were only made as of the date of the ETAA and are modified in important part by the underlying disclosure letter. Moreover, information concerning the subject matter of such representations and warranties may change after the date of the ETAA, which subsequent information may or may not be fully reflected in the Company's or Reporting Persons' public disclosures.

Registration Rights Agreement

On the closing date of the Acquisition and as a condition precedent for the closing, the Company will enter into a registration rights agreement (the "Registration Rights Agreement") with certain of the recipients of the Buyer Units (the "Registration Rights Holders"), pursuant to which the Company will grant certain registration rights to the Registration Rights Holders with respect to, among other things, the shares of Class A Shares to be issued upon conversion of the Buyer Units (the "Registrable Securities").

Under the Registration Rights Agreement, the Registration Rights Holders will have certain customary registration rights, including demand rights and piggyback rights, subject to certain underwriter cutbacks and issuer blackout periods. The Registration Rights Agreement will also establish a lock-up period following the closing, that, subject to certain exceptions, will restrict the rights of Registration Rights Holders to dispose of their Registrable Securities during such period. The Company agreed to pay certain fees and expenses relating to registrations under the Registration Rights Agreement.

The foregoing is only a summary of the material terms of the Registration Rights Agreement and does not purport to be complete, and is qualified in its entirety by reference to the form of such agreement, which is attached as Exhibit E to the ETAA.

Amendment to Amended and Restated Certificate of Incorporation

In connection with seeking stockholder approval of the ETAA, the Company intends to seek stockholder approval of an amendment to its Amended and Restated Certificate of Incorporation (the “Charter”) to be adopted at the closing, which will, among other things, (i) change the name of the Company to The Tempus Group, Inc., (ii) designate the existing Common Stock as Class A common stock, (iii) create the Class B Shares referred to above, (iv) delete certain sections of the Charter that are only applicable to the Company prior to its consummation of an initial business combination, (v) provide that so long as the Members hold at least 45% of the voting power of all then outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, the number of directors will be seven (7) unless otherwise consented to by the holders of a majority of the voting power held by the Members, and (vi) provide that for so long as the Members hold a majority of the voting power of all then outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, any or all of the directors may be removed from office without cause and vacancies filled by the stockholders, including by written consent.

The foregoing is only a summary of the material terms of the Charter as proposed to be amended and does not purport to be complete, and is qualified in its entirety by reference to the form thereof, which is attached as Exhibit B to the ETAA.

Management of Buyer – LLC Operating Agreement

The Company will be the managing member of Buyer. However, so long as the Members beneficially own at least 45% of the issued and outstanding shares of the Company’s common stock (i.e., the Class A Shares and Class B Shares), the approval of the Members holding a majority of the Buyer Units then held by all the Members will be required before Buyer or any of its subsidiaries may take certain significant actions as described in Buyer’s operating agreement. Buyer will elect to be treated as a corporation for tax purposes.

The foregoing is only a summary of the material terms of the LLC Operating Agreement and does not purport to be complete, and is qualified in its entirety by reference to the form of such agreement, which is attached as Exhibit C to the ETAA.

The Extension Proposal

The consummation of the Acquisition described above is also contingent upon approval of the stockholders of the Company, to take place at a special meeting, of a proposal (the “Extension Proposal”) to (i) amend the Company’s Charter to extend the date before which the Company must complete a business combination from September 13, 2014 (the “Current Termination Date”) to March 13, 2015 (the “Extended Termination Date”) (the “Extension Amendment”) and (ii) amend the Company’s Charter and the trust account established in connection with the Company’s initial public offering to reflect the Extended Termination Date and allow holders of its public shares to redeem their public shares

in connection with the Extension Amendment for a pro rata portion of the funds available in the trust account (the "Trust Amendment"). If the Extension Amendment and the Trust Amendment are approved (and not abandoned), the Company will afford the public stockholders the right to redeem their shares for a pro rata portion of the funds available in the trust account at the time the Extension Amendment and the Trust Amendment become effective.

If the Extension Amendment and the Trust Amendment are approved (and not abandoned), the Company will amend the terms of its outstanding warrants to extend the date for automatic termination of the warrants if the Company has not consummated a business combination from the Current Termination Date to the Extended Termination Date. Holders of public warrants will continue to have five years from the consummation of the Company's initial business combination to exercise such warrants.

If the Extension Amendment and the Trust Amendment are approved (and not abandoned), the Warrant Offerors have agreed with the other parties to the Escrow Agreement with respect to the Company's public warrants to amend the Escrow Agreement to provide that the termination event thereunder will be revised to reflect the Extended Termination Date rather than the Current Termination Date. The Warrant Purchasers will offer to purchase up to 7,500,000 public warrants at \$0.30 per warrant in a tender offer to close on or about the Current Termination Date (the "Warrant Extension Tender Offer"). In addition, the number of warrants subject to the Warrant Tender Offer that the Warrant Purchasers will conduct in connection with a business combination will be reduced at a ratio of one for every two warrants that are purchased in connection with the Warrant Extension Tender Offer.

The Reporting Persons are not parties to the foregoing agreements, but, as indicated above, the Extension Amendment and Trust Amendment, as well as completion of the Warrant Tender Offer, are provided for in the ETAA and conditions to the closing of the Acquisition.

Item 5. Interest in Securities of the Issuer.

As a result of the execution of the SSA, the Reporting Persons may be deemed to beneficially own the 1,766,250 shares of Common Stock beneficially owned by the Stockholders, which are subject to the SSA. As represented to the Reporting Persons in the SSA, (i) the aggregate number and percentage of shares of Common Stock beneficially owned by the Stockholders as of July 15, 2014, which are subject to the SSA, is 1,766,250 and 18.1%, respectively, based upon 9,750,000 shares of Common Stock outstanding as reported by the Company in its most recently available filing with the Commission.

As an inducement to the Reporting Persons to enter into the ETAA, the Stockholders entered into the SSA with the Reporting Persons pursuant to which, among other things, they agreed:

- (i) to vote all of the shares of Common Stock beneficially owned by them and over which they have voting control (a) in favor of the Extension Amendment and Trust Amendment (and any actions required in furtherance thereof), (b) in favor of the adoption of the Parent Voting Matters (as defined in the ETAA) (and any actions required in furtherance thereof), (c) against any action, proposal, transaction or agreement that would result in a breach in any respect of any covenant, representation, warranty or any other obligation or agreement of the Company or Buyer contained in the ETAA, and (d) against the following actions or proposals (other than the transactions contemplated by the ETAA (and other transaction documents) and the Extension Proposal): (A) any Parent Competing Transaction (as defined in the ETAA) (except as permitted by the ETAA); (B) any change in present capitalization of Company or any amendment of the certificate of incorporation or bylaws of Company; and (C) any change in Company's corporate structure or business;
- (ii) not to submit their shares for repurchase or redemption or cause its shares to be repurchased or redeemed, whether pursuant to the Redemption Offer (as defined in the ETAA), the right of holders of Common Stock to have the Company redeem such shares if a business combination is not completed by September 13, 2014, any redemption offer by Company in connection with the Extension Proposal, or otherwise;
- (iii) not to, without the Members' Representative's prior written consent, (x) offer for sale, sell (including short sales), transfer, tender, pledge, encumber, assign or otherwise dispose of (including by gift) (collectively, a "Transfer"),

or enter into any contract, option, derivative, hedging or other agreement or arrangement or understanding (including any profit-sharing arrangement) with respect to, or consent to, a Transfer of, any or all of the shares (subject to limited exceptions relating to compensation matters); (y) grant any proxies or powers of attorney with respect to any or all of the shares, except as provided in the SSA; or (z) take any action that would have the effect of preventing, impeding, interfering with or adversely affecting Stockholder's ability to perform its obligations under the SSA.

If and to the extent the Stockholders fail to fulfill their respective voting obligations as described above, the Stockholders have granted Members' Representative an irrevocable proxy to act for them solely with respect to the matters set forth in the SSA. The obligations of the Stockholders under the SSA terminate upon the earliest to occur of (a) the mutual written consent of the Members' Representative and the Stockholders, (b) the closing date for the transactions contemplated by the ETAA, and (c) the date of termination of the ETAA in accordance with its terms.

This foregoing description of the SSA does not purport to be complete and is qualified in its entirety by reference to the SSA, a copy of which is filed as Exhibit 3 to this Schedule 13D and is incorporated herein by reference.

By virtue of the SSA, the Reporting Persons may be deemed to share with the Stockholders the power to vote the shares of the Common Stock subject to the SSA, but only as to the matters specified in the SSA. Except as stated above, the Reporting Persons do not have the power to vote or direct the voting of such shares, nor do they have the sole or shared power to dispose or to direct the disposition of such shares. The Reporting Persons disclaim any beneficial ownership of such shares. Nothing herein shall be deemed to be an admission by the Reporting Persons as to the beneficial ownership of such shares, and no other shares of Common Stock are beneficially owned by the Reporting Persons as of the date hereof.

The Reporting Persons have not effected in any other transaction in the Common Stock during the past sixty days.

To the knowledge of the Reporting Persons, no person other than the Stockholders has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the shares of Common Stock subject to the SSA.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

The information contained in Items 4 and 5 with respect to any contract, arrangement, understanding or relationship described therein is hereby incorporated by reference into this Item 6.

Item 7. Material to be filed as Exhibits.

Exhibit 1 – Joint Filing Agreement dated as of July 25, 2014, by and among Tempus Intermediate Holdings, LLC, John G. Gulbin III and Benjamin Scott Terry.

Exhibit 2 – Equity Transfer and Acquisition Agreement dated as of July 15, 2014, by and among The Tempus Group Holdings, LLC, Tempus Intermediate Holdings, LLC, the Members named therein, Members' Representative named therein (solely for purposes of Sections 1.3, 6.3, 6.5, 6.7, 6.11, 6.20, 6.21 and 8.6 and Articles II, IX, X, XI and XII), the Company and Warrant Offerors named therein (solely for purposes of Sections 6.14 and 6.15).

Exhibit 3 – Supporting Stockholder Agreement dated as of July 15, 2014, by and among Tempus Intermediate Holdings, LLC, John G. Gulbin III, Benjamin Scott Terry, Chart Acquisition Group LLC, The Chart Group, L.P., Christopher D. Brady, Joseph Wright and Cowen Overseas Investment LP.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this statement is true, correct and complete.

TEMPUS INTERMEDIATE HOLDINGS,
LLC

Dated: July 25, 2014

/s/ John G. Gulbin III
John G. Gulbin III
Manager

JOHN G. GULBIN III

Dated: July 25, 2014

/s/ John G. Gulbin III
John G. Gulbin III

BENJAMIN SCOTT TERRY

Dated: July 25, 2014

/s/ Benjamin Scott Terry
Benjamin Scott Terry

SCHEDULE A

MEMBERS AND MANAGERS OF
TEMPUS INTERMEDIATE HOLDINGS, LLC

The members and managers of Tempus Intermediate Holdings, LLC are set forth below. Each individual's business address and the business address of Tempus Jets is c/o Tempus Intermediate Holdings, LLC, 133 Waller Miller Road, Suite 400, Williamsburg, VA 23185.

Members

Name	Principal Occupation	Citizenship
John G. Gulbin III	President of Tempus Jets (and related entities)	United States
Benjamin Scott Terry	Chief Executive Officer of Tempus Jets (and related entities)	United States

Managers

Name	Principal Occupation	Citizenship
John G. Gulbin III	President of Tempus Jets (and related entities)	United States
Benjamin Scott Terry	Chief Executive Officer of Tempus Jets (and related entities)	United States

Joint Filing Agreement

In accordance with Rule 13d-1(k) under the Securities Exchange Act of 1934, as amended, the persons named below agree to the joint filing of a statement on Schedule 13D (including amendments thereto) with respect to the shares of common stock, \$0.0001 per share, of Chart Acquisition Corp., a corporation organized and existing under the laws of Delaware, and further agree that this Joint Filing Agreement be included as an exhibit to such filings provided that, as contemplated by Section 13d-1(k)(1)(ii), no person shall be responsible for the completeness or accuracy of the information concerning the other person making the filing, unless such person knows or has reason to believe that such information is inaccurate. This Joint Filing Agreement may be executed in any number of counterparts, all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Joint Filing Agreement as of July 25, 2014.

TEMPUS INTERMEDIATE HOLDINGS,
LLC

By: /s/ John G. Gulbin III
John G. Gulbin III
Manager

JOHN G. GULBIN III

By: /s/ John G. Gulbin III
John G. Gulbin III

BENJAMIN SCOTT TERRY

By: /s/ Benjamin Scott Terry
Benjamin Scott Terry

EXHIBIT 2

STRICTLY CONFIDENTIAL
EXECUTION VERSION

EQUITY TRANSFER AND ACQUISITION AGREEMENT

dated as of

July 15, 2014

by and among

THE TEMPUS GROUP HOLDINGS, LLC,

TEMPUS INTERMEDIATE HOLDINGS, LLC,

MEMBERS,

MEMBERS' REPRESENTATIVE,

(solely for purposes of Sections 1.3, 6.3, 6.5, 6.7, 6.11, 6.20, 6.21 and 8.6
and Articles II, IX, X, XI and XII)

CHART ACQUISITION CORP.,

and

WARRANT OFFERORS

(solely for purposes of Sections 6.14 and 6.15)

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ANNEX

Annex A Members

Annex B Officers and Directors

APPENDICES

Appendix A Defined Terms

Appendix B Warrant Tender Offer Conditions

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EXHIBITS

Exhibit A Form of Supporting Stockholder Agreement

Exhibit B Form of Third Amended and Restated Parent Certificate

Exhibit C Form of Buyer LLC Agreement

Exhibit D Form of Restructuring Agreement

Exhibit E Form of Registration Rights Agreement

EQUITY TRANSFER AND ACQUISITION AGREEMENT

THIS EQUITY TRANSFER AND ACQUISITION AGREEMENT (this “Agreement”) is entered into as of this 15th day of July, 2014, among (i) The Tempus Group Holdings, LLC, a Delaware limited liability company (the “Buyer”), (ii) Tempus Intermediate Holdings, LLC, a Delaware limited liability company (the “Company”), (iii) each of the Persons set forth on Annex A (the “Members”, and, together with the Company, the “Seller Parties”), (iv) Benjamin Scott Terry and John G. Gulbin III, as Members’ Representative, solely for purposes of Sections 1.3, 6.3, 6.5, 6.7, 6.11, 6.20, 6.21 and 8.6 and Articles II, IX, X, XI and XII, (v) Chart Acquisition Corp., a Delaware Corporation (“Parent”), and (vi) Chart Acquisition Group LLC, Mr. Joseph Wright and Cowen Overseas Investment LP (the “Warrant Offerors”), solely for purposes of Sections 6.14 and 6.15. The Buyer, the Company and the Members are referred to herein individually as a “Party” and collectively as the “Parties”. Capitalized terms not otherwise defined herein have the respective meanings ascribed to them in Appendix A.

RECITALS

WHEREAS, the Company has been formed under the laws of the State of Delaware;

WHEREAS, prior to or concurrently herewith, the Company and the Members have entered into the Restructuring Agreement, which provides for a reorganization (the “Reorganization”) pursuant to which, subject to the receipt of certain consents as provided therein, the Members will contribute the Subsidiaries of the Company to the Company in exchange for all of the issued and outstanding Company Units;

WHEREAS, concurrently herewith, each of Chart Acquisition Group LLC, The Chart Group, L.P., Christopher D. Brady, Joseph Wright and Cowen Overseas Investment LP are entering into a Supporting Stockholder Agreement, in the form attached hereto as Exhibit A, with the Company, Benjamin Scott Terry and John G. Gulbin III pursuant to which each holder of Parent Common Stock party thereto agrees to vote in favor of the Parent Voting Matters, and to cause all Parent Common Stock held by such person not to be redeemed pursuant to the Redemption Offer, in each case on the terms and conditions set forth therein;

WHEREAS, upon the terms and subject to the conditions set forth herein, the Buyer desires to acquire from the Members, and each Member desires to transfer to the Buyer, all of such Member’s Company Units.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties agree as follows:

ARTICLE I

TRANSFER OF UNITS

1.1 Equity Transfer. On the terms and subject to the conditions of this Agreement, for the consideration specified in Section 1.2, the Buyer agrees to acquire from each of the Members, and each Member agrees to transfer, assign and deliver to the Buyer, the Acquired Units owned by such Member, free and clear of all Encumbrances (the “Equity Transfer”).

1.2 Consideration.

(a) In exchange for the acquisition by the Buyer of the Acquired Units and the covenants of the Members hereunder each Member shall receive, in exchange for each Company Unit held by such Member immediately prior to the Closing the Per Company Unit Consideration, as may be adjusted pursuant to Section 1.3(e).

(b) Not less than three (3) Business Days prior to Closing, the Company shall prepare and deliver to the Buyer a closing statement setting forth the Company's good faith estimate of the Adjustment Amount (such estimate, the "Estimated Adjustment Amount") together with reasonably detailed back-up data to support such estimate of each item from which such amount is calculated. The Estimated Adjustment Amount shall be prepared in accordance with GAAP and, to the extent consistent with GAAP, in accordance with the practices and procedures of the Company and its Subsidiaries, in each case in accordance with the form, methodology and principles used in preparing the Balance Sheet. During the preparation and calculation of the Estimated Adjustment Amount, the Company shall, and shall cause its Subsidiaries, to afford the Buyer a reasonable opportunity to review and comment thereon.

(c) At the Closing, (A) (i) the Buyer shall issue to each Member, in exchange for each issued and outstanding Company Unit then held by such Member, the Per Company Unit Consideration, (ii) the Buyer shall admit each Member as a member of the Buyer holding the applicable number of Buyer Units, which shall be evidenced as provided in Article III of the Buyer LLC Agreement, and (iii) Parent shall issue to each Member a stock certificate (if applicable) evidencing the applicable number of Class B Parent Shares in accordance with the Third Amended and Restated Parent Certificate and the Buyer LLC Agreement and (B) in consideration for the Parent Contribution Amount the Buyer shall issue to Parent a number of Buyer Units, or a number of Buyer Units held by Parent shall be cancelled, as applicable, such that the number of Buyer Units held by Parent equals the number of shares of Parent Common Stock outstanding immediately after the Closing.

1.3 Transfer Price Adjustment.

(a) Within sixty (60) days following the Closing Date, the Buyer shall deliver to the Members' Representative a Closing statement (the "Closing Statement") setting forth the Buyer's good faith calculation of the Adjustment Amount, including, without limitation, Net Debt, together with reasonably detailed back-up data to support each item from which such amount is calculated. The Closing Statement shall be prepared in accordance with GAAP and, to the extent not inconsistent therewith, using the same methodologies used in preparing the Balance Sheet, taking into account information that becomes available after the Closing in accordance with GAAP. The Company shall cooperate with the Buyer in the preparation of the Closing Statement as reasonably requested by the Buyer.

(b) The Members' Representative shall have a period of thirty (30) days following the Buyer's delivery of the Closing Statement to notify the Buyer of the Members' Representative's election to dispute the Closing Statement or any portion thereof. During such thirty (30)-day period, the Buyer and Parent shall provide the Members' Representative and its agents and representatives with reasonable access to all books, records and employees of the Company and any of its Subsidiaries, Buyer and Parent (including supporting documents and working papers) to the extent relating to the preparation or review of the Closing Statement. If (i) at any time during such thirty (30)-day review period, the Members' Representative delivers written notice to the Buyer of its acceptance of the Closing Statement or (ii) prior to the expiration of such thirty (30)-day review period, the Members' Representative does not deliver to the Buyer written notice of its disagreement specifying the nature and amount of any disputed item (a "Notice of Disagreement"), then the Closing Statement and any required adjustments resulting therefrom shall be deemed final and binding on the Members and the Members' Representative. To the extent that the Members' Representative delivers a timely Notice of Disagreement, the Members, Buyer and Parent shall be deemed to have agreed with all items and amounts in the Closing Statement not specifically referenced in such Notice of Disagreement, and such items and amounts shall not be subject to review in accordance with this Section 1.3(b) or Section 1.3(d). Any Notice of Disagreement may reference only disagreements (i) based upon either mathematical errors or amounts reflected in the Closing Statement or (ii) that either the Closing Statement or the calculation of the Adjustment Amount, or any amount contained therein was not prepared in accordance with this Article I (together with any corresponding definitions).

(c) During the thirty (30)-day period following timely delivery of a Notice of Disagreement by the Members' Representative to the Buyer, the Buyer and the Members' Representative shall in good faith seek to resolve in writing any differences that they may have with respect to the matters identified therein, and all such discussions related thereto will (unless otherwise agreed by Buyer and the Members' Representative) be considered compromise negotiations under Rule 408 of the Federal Rules of Evidence and any applicable similar state rule. During such thirty (30)-day period, the Members' Representative shall provide the Buyer and its Representatives with reasonable access, during normal business hours and upon reasonable prior notice to the Members' Representative, to the working papers of the Members' Representative and its Representatives relating to such Notice of Disagreement. Any disputed items resolved in writing between the Members' Representative and the Buyer within such thirty (30)-day period shall be final and binding with respect to such items, and if the Members' Representative and the Buyer agree in writing on the resolution of all disputed items specified by the Members' Representative in the Notice of Disagreement, the Adjustment Amount as so determined shall be final and binding on the Parties.

(d) In the event that the Members' Representative and the Buyer are unable to resolve all disputed items in the Notice of Disagreement within thirty (30) days following the date upon which the Buyer received written notice from the Seller Parties disputing the Closing Statement, then within ten (10) days after the expiration of such thirty (30)-day period, the Buyer and the Members' Representative shall submit, in writing, to the Accounting Firm, their briefs detailing their views as to the nature and amount of each item remaining in dispute, and the Accounting Firm shall make a written determination as to each such disputed item, which determination shall be final and binding for purposes of this Agreement. The Accounting Firm shall be (i) engaged by the Buyer and the Members' Representative on a joint basis and (ii) authorized to resolve only those items remaining in dispute between the parties in accordance with the provisions of this Section 1.3 within the range of the difference between the Buyer's position with respect thereto and the Members' Representative's position with respect thereto. The determination of the Accounting Firm shall be accompanied by a certificate of the Accounting Firm that it reached such determination in accordance with the provisions of this Section 1.3. The Buyer and the Members' Representative shall request that the Accounting Firm render its determination prior to the expiration of sixty (60) days after the dispute is submitted to the Accounting Firm, and such determination and any required adjustments resulting therefrom shall be final and binding on all of the Parties and the Members' Representative. The fees and expenses of the Accounting Firm shall be paid by the Company.

(e) Following the final determination of the Adjustment Amount, (i)(A) if the Adjustment Amount is greater than the Estimated Adjustment Amount, the Schedule of Members (as defined in the Buyer LLC Agreement) shall be adjusted to reflect the cancellation of the number of Buyer Units held by the Members, and (B) if the Estimated Adjustment Amount is greater than the Adjustment Amount, the Schedule of Members (as defined in the Buyer LLC Agreement) shall be adjusted to reflect the issuance of the number of Buyer Units to the Members, in each case equal to the product of (x) such excess, divided by (y) \$10, and (ii) in accordance with Article IV of the Third Amended and Restated Parent Certificate and the Buyer LLC Agreement, Parent shall reacquire and cancel Class B Parent Shares held by the Members or issue additional Class B Parent Shares to the Members, as applicable (and Parent shall cancel and/or issue certificates representing such Class B Parent Shares as needed to evidence such issuances or cancellations of such Class B Parent Shares), such that the number of Class B Parent Shares held by a Member at all times equals the number of Buyer Units held by such Member. Any cancellation or issuance pursuant to the foregoing shall be pro rata among the Members in proportion to the number of issued and outstanding Company Units held by such Member immediately prior to the Closing as compared to the total number of Company Units held by all Members immediately prior to the Closing.

1.4 Withholding of Tax. The Buyer (or any other payor) shall be entitled (but not obligated) to deduct and withhold from the consideration otherwise payable to the Members pursuant to this Agreement such amounts as the Buyer shall determine in good faith are required to be deducted and withheld with respect to the making of such payment under the Code or any provision of federal, state, local or foreign Tax Law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Members.

ARTICLE II

CLOSING

2.1 Time and Place of the Closing. The Closing shall take place at the offices of Morrison & Foerster LLP, 1650 Tysons Boulevard, Suite 400, McLean, Virginia, remotely via the exchange of documents and signatures by facsimile or electronic delivery, on the third (3rd) Business Day after the satisfaction or waiver of the conditions set forth in Article VII and Article VIII (other than those conditions that, by their nature, are to be satisfied at the Closing) or on such other date as the Buyer and the Members' Representative mutually agree.

2.2 Deliveries. At the time of the Closing, (a) each of the Seller Parties and the Members' Representative shall deliver to the Buyer the various certificates, instruments and documents referred to in Section 7.6 below to be delivered by it and (b) Parent and the Buyer shall deliver to each Member, in exchange for each issued and outstanding Company Unit then held by such Member, the Per Company Unit Consideration as set forth in Section 1.2(c) above and each of Parent and the Buyer shall deliver or cause to be delivered to the Members the certificates, instruments and documents referred to in Section 8.6 below to be delivered by it.

ARTICLE III

REPRESENTATIONS AND WARRANTIES RELATING TO THE COMPANY

As a material inducement to the Buyer to enter into this Agreement and to consummate the Transactions, except as set forth on the correspondingly numbered section or subsection of the Company Schedules (it being agreed that the disclosure of any item in one section or subsection thereof shall be deemed included on any other section or subsection and to modify each other representation or warranty (even if such representation or warranty does not reference the Company Schedules) to which the relevance of such item is reasonably apparent on its face), the Company represents and warrants to the Buyer, as of the date hereof and as of the Closing Date, as follows:

3.1 Organization and Corporate Power.

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware, and is qualified or registered to do business and in good standing in each jurisdiction where the nature of its activities makes such qualification or registration necessary, except where the failure to be so qualified, registered or in good standing is not reasonably expected to result in a Material Adverse Effect on the Company and its Subsidiaries (taken as a whole). Each of the Company's Subsidiaries is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization, and is qualified or registered to do business and in good standing in each jurisdiction where the nature of its activities makes such qualification or registration necessary, except where the failure to be so qualified, registered or in good standing is not reasonably expected to result in a Material Adverse Effect on the Company and its Subsidiaries (taken as a whole). The Company and each of its Subsidiaries has the full corporate or limited liability company (as applicable) power and authority necessary to own and operate its properties and to conduct its business as now conducted. Complete and accurate copies of the organizational documents of the Company and each of its Subsidiaries (as in effect prior to amendment in connection with the Reorganization) have been delivered to the Buyer prior to the date hereof and reflect all amendments made thereto at any time prior to the date of this Agreement. A complete and accurate copy of the limited liability company agreement of the Company is attached as Exhibit O to the Restructuring Agreement and, as of the Closing, the limited liability company agreement of each of Subsidiaries of the Company is substantially in the form attached as Exhibit P to the Restructuring Agreement. Neither the Company nor any of its Subsidiaries is in default under or in violation of any provision of its operating agreement or other organizational document or any resolution adopted by its members or managers.

(b) Schedule 3.1 lists each Subsidiary of the Company and sets forth all jurisdictions in which the Company and its Subsidiaries are qualified or registered to do business. The books of account and transfer ledgers of the Company and each of its Subsidiaries are accurate, up-to-date and complete, and have been maintained in accordance with prudent business practices and all applicable Laws. Following the completion of the 351 Exposure Statement, the Seller Parties shall cause to be delivered to Buyer a statement of the tax basis of the assets of the Company and its Subsidiaries that is complete and accurate in all material respects. There have been no meetings or other Proceedings or actions, resolutions or consents of the members of the Company or any of its Subsidiaries or the managers of the Company or any of its Subsidiaries that are not fully reflected in such minutes. Neither the Company nor any of its Subsidiaries has conducted any business under or otherwise used, for any purpose, any fictitious name, assumed name, trade name or other name, other than the names set forth on Schedule 3.1.

3.2 Authority for Agreement. The Company has full limited liability company power, authority and legal right to enter into and perform its obligations under the Transaction Documents to which it is or will be a party and to consummate the Transactions. The managers and the members of the Company have unanimously authorized the Company's execution, delivery and performance of the Transaction Documents and the consummation of the Transactions and the Company has provided the Buyer with a true, correct and complete copy of each such authorization. No other limited liability company proceedings on the part of the Company, or any member of the Company, are, or will be, necessary to approve and authorize the Company's execution, delivery and performance of the Transaction Documents or consummation of the Transactions. The Transaction Documents to which the Company is a party have been or will be duly executed and delivered by the Company and, assuming due execution and delivery by all counterparties thereto, are or will be legal, valid and binding obligations of the Company, enforceable against it in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights in general or the rules governing availability of specific performance, injunctive relief or other equitable remedies and general principals of equity, regardless of whether considered in a Proceeding in equity or at law (the "Bankruptcy and Equity Exceptions").

3.3 No Violation to Result. Other than with respect to the Securities Laws or as may be required by reason of Parent's or the Buyer's participation in the Transactions, and assuming all consents or filings set forth on Schedule 3.3 are obtained or made, the execution, delivery and performance by the Company of the Transaction Documents to which the Company is a party and the consummation by the Company of the Transactions and the fulfillment by the Company of the terms hereof and thereof, do not and will not, directly or indirectly (with or without notice or lapse of time, or both): (a) violate, breach, conflict with, constitute a default under, accelerate or permit the acceleration of the performance required by (i) any of the terms of the operating agreement or other organizational documents of the Company or any of its Subsidiaries or any resolution adopted by the managers or members of the Company or any of its Subsidiaries, (ii) any Material Contract to which the Company or any of its Subsidiaries is a party or by which they or their assets are bound, or (iii) any Law or other legal requirement of any Governmental Authority applicable to the Company or any of its Subsidiaries; (b) give any Person the right to declare a default or exercise any remedy or accelerate performance or maturity under any Material Contract or cancel, terminate or modify any Material Contract; (c) give any Governmental Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any material permit or license that is held by the Company or any of its Subsidiaries or that otherwise is used in or necessary for the Company's or any of its Subsidiaries' business or any of the assets owned or used by the Company or any of its Subsidiaries; or (d) result in the creation or imposition of any material Encumbrance or restriction (other than as expressly provided in the Transaction Documents) in favor of any Person (other than the Buyer) upon any of the Acquired Units or any of the properties or assets of the Company or any of its Subsidiaries under any Contract entered into by the Company or its Subsidiaries, except, in the case of each of (a)(ii), (a)(iii) and (b), where the failure of such representations and warranties to be so true and correct is not material to the Company and its Subsidiaries (taken as a whole). No notice to, filing with, or consent of any Governmental Authority under any Law or any Person under any Material Contract is necessary in connection with, and no "change of control" provision in any Material Contract is, or will be, triggered by, the authorization, approval, execution, delivery or performance by the Company or any of its Subsidiaries of the Transaction Documents or the consummation by the Company or any of its Subsidiaries of the Transactions pursuant thereto, except (x) as set forth on Schedule 3.3, (y) under the Exchange Act, the Securities Act or other federal or state securities, "blue sky" or takeover Laws and any rules or regulations promulgated thereunder (collectively, the "Securities Laws") or (z) any notice, filing or consent, the failure of which to be made or obtained, as applicable, is not material to the Company and its Subsidiaries (taken as a whole).

3.4 Capitalization.

(a) As of the date hereof (without giving effect to the Reorganization), the ownership of the issued and outstanding membership interests of each of the Company and its Subsidiaries are set forth on Schedule 3.4(a). Immediately following consummation of the Reorganization, the Members are the sole record and beneficial owners of all of the issued and outstanding membership interests of the Company.

(b) All of the issued and outstanding membership interests or other equity securities of the Company and each of its Subsidiaries have been duly authorized and validly issued, and are fully paid and non-assessable. Except as set forth on Schedule 3.4(b), following the consummation of the Reorganization, all of the outstanding membership interests or other equity securities of each Subsidiary of the Company will be owned, directly or indirectly, by the Company, free and clear of any Encumbrances other than applicable Securities Laws. Except as set forth on Schedule 3.4(b), no restrictions on transfer, repurchase option, right of redemption, preemptive rights, proxies, membership agreements, rights of first refusal or other similar agreements or rights exist with respect to the membership interests or other equity securities of the Company or any of its Subsidiaries and no such rights will arise by virtue of the Transactions, in each case, other than as set forth in the applicable operating agreement or other organizational documents of such entity, the Restructuring Agreement and the other agreements to be delivered in connection therewith and in the Transaction Documents.

(c) There is no: (i) outstanding subscription, option, call, warrant or right (whether or not currently exercisable) to acquire or sell or issue any membership interests or other equity securities of the Company or any of its Subsidiaries; (ii) outstanding security, instrument or obligation that is or may become convertible into or exercisable or exchangeable for any membership interests or other equity securities of the Company or any of its Subsidiaries; or (iii) Contract under which the Company or any of its Subsidiaries is or may become obligated to acquire, sell or otherwise issue any of its membership interests or other equity securities; in each case, other than as set forth in the applicable operating agreement or other organizational documents of such entity or the Restructuring Agreement and other agreements to be delivered in connection therewith. There are no outstanding restricted securities, phantom securities or other equity-based compensation arrangements, profit participation or other similar rights with respect to the Company or any of its Subsidiaries.

(d) All membership interests or other equity securities of the Company and each of its Subsidiaries have been issued in compliance with all applicable Securities Laws and other applicable legal requirements. Neither the Company nor any of its Subsidiaries is obligated to redeem or otherwise acquire any of its outstanding membership interests or other equity securities other than as set forth in the applicable operating agreement or other organizational documents of such entity.

(e) Except as set forth on Schedule 3.4(e), (i) neither the Company nor any of its Subsidiaries has with respect to any Person other than the Company and its Subsidiaries any direct or indirect debt, equity or other investment or interest in any Person or (ii) neither the Company nor any of its Subsidiaries has any commitments to contribute to the capital of, or make loans to or share losses of, any Person other than the Company and its Subsidiaries (either pursuant to a written Contract or a Contract in the process of being negotiated).

3.5 Financial Statements.

(a) Schedule 3.5(a) includes true, complete and correct copies of the Year-End Financials. The Year-End Financial Statements (i) were prepared consistent with the Company's and its Subsidiaries' books and records, (ii) present fairly in all material respects the combining financial position of the Company and its Subsidiaries as of the respective dates thereof and the combining results of the Company's and its Subsidiaries' operations and cash flows for the periods thereof, and (iii) have been prepared in accordance with GAAP.

(b) Following the completion of the Required Financial Statements, the Seller Parties shall, pursuant to Section 6.24, deliver to Parent and the Buyer as a supplement to Schedule 3.5(a) true, complete and correct copies of the Required Financial Statements. Each of the Required Financial Statements (including in all cases the notes thereto, if any) (i) was prepared consistent with the Company's and its Subsidiaries' books and records, (ii) presents fairly in all material respects the financial position of the Company and its Subsidiaries as of the respective dates thereof and the results of the Company's and its Subsidiaries' operations and cash flows for the periods thereof, (iii) has been prepared in accordance with GAAP (provided that any interim financial statements included in the Required Financial Statements will not include footnote disclosures and other presentation items not required by GAAP to be included in interim financial statements and will not include year-end adjustments) and (iv) to the extent required for inclusion in the Public Disclosure Documents, when filed, mailed or distributed, as applicable, shall comply, in all material respects, with the applicable requirements of the Exchange Act, Regulation S-X and the published general rules and regulations of the SEC.

(c) Except as set forth on Schedule 3.5(a), since the Balance Sheet Date, there has been no material change in the Company's or its Subsidiaries' accounting policies, except for any such change required because of a concurrent change in GAAP. The Company has delivered to the Buyer copies of each management letter or other letter delivered to the Company or any of its Subsidiaries by its accounting firm in connection with the Financial Statements or relating to any review by such accounting firm of the internal controls of the Company and its Subsidiaries.

(d) Any financial statements (and the notes thereto, if any) of the Company and its Subsidiaries delivered pursuant to the terms of this Agreement shall, when delivered, (i) be prepared consistent with the Company's and its Subsidiaries' books and records, (ii) present fairly in all material respects the financial position of the Company and its Subsidiaries as of the respective dates thereof and the results of the Company's and its Subsidiaries' operations and cash flows for the periods indicated (with respect to the Year-End Financial Statements, on a combining basis), (iii) be prepared in accordance with GAAP (provided that any unaudited financial statements included in the Required Financial Statements will not include footnote disclosures and other presentation items not required by GAAP to be included in interim financial statements and will not include year-end adjustments), and (iv) to the extent required for inclusion in the Public Disclosure Documents, when filed, mailed or distributed, as applicable, comply, in all material respects, with the applicable requirements of the Exchange Act, Regulation S-X and the published general rules and regulations of the SEC.

(e) Schedule 3.5(e) provides a breakdown and aging of all accounts receivable, notes receivable and other receivables of the Company and its Subsidiaries as of May 31, 2014 that is accurate in all material respects. All existing accounts receivable (net of any allowances for doubtful accounts) of the Company and its Subsidiaries (including those accounts receivable reflected on the Balance Sheet that have not yet been collected and those accounts receivable that have arisen since the Balance Sheet Date and have not yet been collected) represent valid obligations to the Company and its Subsidiaries arising from bona fide transactions entered into in the ordinary course of business. Except as set forth on Schedule 3.5(e), no Person has any Encumbrance, other than a Permitted Encumbrance, on such receivables or any part thereof, and no agreement for deduction, free goods, discount or other deferred price or quantity adjustment shall have been made with respect to any such receivables.

(f) The Company and its Subsidiaries have established and maintain, or will establish prior to the Company Schedule Update Date and through the Closing Date, disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act. The Company's and its Subsidiaries' disclosure controls and procedures are, or as of Company Schedule Update Date and through the Closing Date will be, reasonably designed to ensure that all material information required to be disclosed by the Company or its Subsidiaries in the reports that it files or furnishes under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such material information is accumulated and communicated to the Company's or its Subsidiaries' management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act. Based on its then-most recent evaluation of internal controls over financial reporting prior to the date thereof, management of the Company and its Subsidiaries will have disclosed to the Company's and its Subsidiaries' auditors prior to the Company Schedule Update Date (i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect in any material respect the Company's and its Subsidiaries' ability to report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's and its Subsidiaries' internal control over financial reporting, and each such deficiency, weakness and fraud so disclosed to auditors, if any, has been disclosed to the Buyer, in each case as discovered or determined to exist pursuant to such evaluation.

3.6 Liabilities. There are no Liabilities of the Company or its Subsidiaries (excluding, for the sake of clarity, the Excluded Entities), other than: (a) Liabilities reflected on the Balance Sheet and not previously paid or discharged; (b) Liabilities that would not be required to be reflected on a balance sheet of the Company and its Subsidiaries (excluding, for the sake of clarity, the Excluded Entities) prepared in accordance with GAAP; (c) Liabilities incurred after the Balance Sheet Date arising in the ordinary course of business and consistent with past practice; (d) Liabilities under, or expressly permitted or required to be incurred in accordance with, the Transaction Documents or the Transactions; (e) performance obligations under this Agreement or the other Transaction Documents; (f) performance obligations under Contracts entered into in the ordinary course of business (none of which results from, arises out of, relates to or was caused by any breach of contract or breach of warranty); or (g) Expenses. As of the date hereof, neither the Company nor any of its Subsidiaries is a guarantor of Indebtedness of any other Person other than endorsements for collection in the ordinary course of business. Schedule 3.6 provides an accurate and complete breakdown as of May 31, 2014 of all Indebtedness of the Company and its Subsidiaries. Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, (a) any Contract associated with off-balance sheet financing, including any arrangement for the sale of receivables, (b) any hedging, derivatives or similar Contract or arrangement, (c) any sale-leaseback arrangement or synthetic lease, or (d) any Contract pursuant to which the Company or any of its Subsidiaries is obligated to make any capital contribution or other investment in or loan to any Person.

3.7 Adverse Changes. Except as set forth on Schedule 3.7, since the Balance Sheet Date, (a) the Company and each of its Subsidiaries has operated its business in the ordinary course and consistent with past practice; (b) the Company and its Subsidiaries (taken as a whole) have not suffered a Material Adverse Effect or any effect, event or change that individually or in the aggregate is reasonably expected to have a Material Adverse Effect on the Company and its Subsidiaries (taken as a whole); and (c) neither the Company nor any of its Subsidiaries has taken any action, omitted any action or entered into any agreement or understanding that, if taken, omitted or entered into following the date hereof, would constitute a breach of Section 6.2 hereof.

3.8 Employee Benefit Plans.

(a) Schedule 3.8(a) sets forth a true, correct, and complete list of each Benefit Plan, other than immaterial fringe benefits. None of any current or former employee, director, consultant or independent contractor of the Company or any of its Subsidiaries would receive benefits under any arrangement that would meet the definition of "Benefit Plan" where any of the Company's or any of its Subsidiaries' Affiliates' maintain, sponsor or contribute to such arrangement.

(b) There has been delivered to the Buyer, with respect to each Benefit Plan, the following: (i) a copy of the annual report (if required under ERISA) with respect to each such Benefit Plan for the most recent plan year (including all schedules and attachments); (ii) a copy of the summary plan description, together with each summary of material modification required under ERISA with respect to such Benefit Plan; (iii) a true and complete copy of each written Benefit Plan document and all amendments thereto that have been adopted since the most recent plan restatement; (iv) all trust agreements, insurance contracts and other funding instruments with respect to each funded or insured Benefit Plan; and (v) copies of all nondiscrimination and top-heavy testing reports for the most recent plan year with respect to each Benefit Plan that is subject to nondiscrimination and/or top-heavy testing.

(c) Each Benefit Plan and each related trust has been maintained and administered in accordance in all material respects with its governing instruments and in all material respects with all applicable Laws, including, but not limited to, ERISA and the Code. All payments and contributions by the Company or any of its Subsidiaries required by any Benefit Plan, by any collective bargaining agreement or by applicable Law (including all employee and employer contributions, insurance premiums, or intercompany charges) have been timely made when due in amounts not in excess of the limits imposed by the terms of such Benefit Plan or applicable Law for the relevant period to which such payments or contributions relate, except, in each case, as would not result in any material liability to the Company or any of its Subsidiaries. All unpaid amounts attributable to any such Benefit Plan for any period prior to the Closing Date are accrued on the Company's and its Subsidiaries' books and records in accordance in all material respects with GAAP.

(d) Each Benefit Plan intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS or is maintained under a prototype or volume submitter plan and may rely upon a favorable opinion or advisory letter issued by the IRS with respect to such prototype or volume submitter plan. To the Knowledge of the Company, nothing has occurred that is reasonably likely to adversely affect such determination, opinion, or advisory letter or cause such Benefit Plan to lose its tax-exempt status.

(e) With respect to each applicable Benefit Plan: (i) no non-exempt "prohibited transaction," within the meaning of Section 4975 of the Code or Section 406 of ERISA, has occurred that is reasonably likely to result in material liability to the Company or any of its Subsidiaries; (ii) there are no actions, suits or claims pending, or threatened in writing or anticipated (other than routine claims for benefits) against any such Benefit Plan or fiduciary thereto or against the assets of any such Benefit Plan; (iii) there are no audits, inquiries or Proceedings pending or threatened in writing by any Governmental Authority with respect to any such Benefit Plan; (iv) no matters are currently pending with respect to any such Benefit Plan under the Employee Plans Compliance Resolution System maintained by the IRS or any similar program maintained by any other Governmental Authority; and (v) there has been no breach of fiduciary duty (including violations under Part 4 of Title I of ERISA) that has resulted or is reasonably likely to result in a material Liability to the Company or any of its Subsidiaries or any of their respective employees.

- (f) No Benefit Plan provides for health or life benefits for former directors, officers or employees (or any spouse or former spouse or other dependent thereof), other than benefits required by Section 4980B of the Code, Part 6 of Title I of ERISA, or similar provisions of state law.
- (g) Other than as set forth on Schedule 3.8(g), none of the benefits under each Benefit Plan, with the exception of any flexible spending arrangements subject to Sections 125 of the Code, are self-insured.
- (h) Each Benefit Plan, to the extent applicable, is in compliance, in all material respects, with the continuation coverage requirements of Section 4980B of the Code, Section 601 through 608 of ERISA, the Patient Protection and Affordable Care Act of 2010 and the regulations thereunder, the Health Care and Education Reconciliation Act of 2010 and the regulations thereunder, the Americans with Disabilities Act of 1990, as amended, and the regulations thereunder, the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations thereunder (including, but not limited to, 45 CFR Parts 142, 160, 162 and 164), the Womens Health and Cancer Rights Act of 1998, the Mental Health Parity Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996 and the Family Medical Leave Act of 1993, as amended, as such requirements affect the Company or any of its Subsidiaries and their respective employees. There are no outstanding, uncorrected violations under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, with respect to any of the Benefit Plans, covered employees or qualified beneficiaries that would be reasonably likely to result in a material Liability to the Company or any of its Subsidiaries.
- (i) No Benefit Plan, and neither the Company nor any of its Subsidiaries nor any ERISA Affiliate thereof currently maintains, contributes to or participates in, nor does the Company or any of its Subsidiaries or any ERISA Affiliate thereof have any obligation to maintain, contribute to or otherwise participate in, or have any Liability or other obligation (whether accrued, absolute, contingent or otherwise) under, any (i) "multiemployer plan" (within the meaning of Section 3(37) of ERISA), (ii) "multiple employer plan" (within the meaning of Section 413(c) of the Code), (iii) "multiple employer welfare arrangement" (within the meaning of Section 3(40) of ERISA), or (iii) plan that is subject to the provisions of Title IV of ERISA or Sections 412 or 430 of the Code. Other than as set forth on Schedule 3.8(i), no Benefit Plan is maintained through a professional employer organization.
- (j) All reports, forms and other documents required to be filed with any Governmental Authority or furnished to employees with respect to any Benefit Plan (including summary plan descriptions, Forms 5500 and summary annual reports) have been timely filed or furnished and are accurate in all material respects.
- (k) The execution and delivery by the Company of the Transaction Documents, either alone or in combination with another event (where such event would not alone have an effect described in this sentence), and the consummation of the Transactions, will not (i) conflict with or result in any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation, modification, increase of compensation payable or acceleration of any obligation or loss of any benefit under any Benefit Plan, trust or loan that will result in any material payment (whether of severance pay or otherwise or any bonus, distribution, increase in benefits or obligation to fund benefits), or acceleration, forgiveness of indebtedness, or vesting, (ii) result in any payment or provide any benefit by the Company or any of its Subsidiaries that would constitute an "excess parachute payment", within the meaning of such term under Section 280G of the Code, or (iii) result in a tax gross-up payment.

(l) Other than as set forth on Schedule 3.8(l), none of the Benefit Plans (i) provides for the payment of separation, severance, termination or similar-type benefits to any Person, or (ii) obligates the Company or any of its Subsidiaries to pay separation, severance, termination or similar-type benefits solely as a result of any transaction.

(m) Each Benefit Plan, employment agreement, or other contract, plan, program, agreement or arrangement that is a “nonqualified deferred compensation plan” (within the meaning of Section 409A(d)(1) of the Code) has been in compliance in all material respects with Section 409A of the Code and the applicable guidance thereunder; and no additional Tax under Section 409A(a)(1)(B) of the Code has been or is reasonably likely to be incurred by a participant in any such Benefit Plan, employment agreement, or other contract, plan, program, agreement or arrangement. Neither the Company nor any of its Subsidiaries nor any ERISA Affiliate thereof, is a party to, or otherwise obligated under, any contract, agreement, plan or arrangement that provides for the gross-up of Taxes imposed by Section 409A(a)(1)(B) of the Code. No right to acquire the membership interests or other equity securities of the Company or any of its Subsidiaries (i) has an exercise price that was less than the fair market value of the underlying equity as of the date such right was granted, (ii) has any feature for the deferral of compensation other than the deferral of recognition of income until the later of exercise of disposition of such right, or (iii) can be considered a class of securities of the Company or any of its Subsidiaries that is not “service recipient stock” (within the meaning of applicable regulations under Section 409A of the Code).

(n) Neither the Company nor any of its Subsidiaries thereof sponsors, maintains or contributes to, or is obligated to contribute to, any material Benefit Plan that is maintained outside the United States primarily for the benefit of Persons substantially all of whom are “nonresident aliens” within the meaning of Section 4(b)(4) of ERISA.

3.9 Employee Matters.

(a) Schedule 3.9(a) contains a complete and correct list (i) as of May 31, 2014, of all employees of the Company and the Subsidiaries (the “Company Employees”), including each Company Employee’s name, hire date, base salary or wage rate, target annual incentive compensation (if any), and status as exempt or non-exempt, the 2013 compensation paid to such Company Employee, and the accrued vacation time and sick leave of such Company Employee, and (ii) as of April 23, 2014, all individuals currently performing services for the Company or its Subsidiaries who are classified as independent contractors or otherwise classified as non-employees, including each such individual’s name and compensation (the “Company Contractors”). Except as set forth on Schedule 3.9(a), the Company Employees are employed on an at-will basis, such that their employment may be terminated at will at any time with or without cause and without Liability for payment of damages or severance. As of the date hereof, to the Knowledge of the Company, no officer has any plans to terminate his or her employment relationship with the Company or any of its Subsidiaries. Except as set forth on Schedule 3.9(a), to the Knowledge of the Company, there are no agreements between any officer and any other Person that would restrict, in any manner, such Person’s ability to perform services for the Company, its Subsidiaries or the Buyer or the right of any of them to compete with any Person or the right of any of them to sell to or purchase from any other Person.

(b) Neither the Company nor any of its Subsidiaries is, or, since December 31, 2009 has been, bound by or subject to (and none of its assets or properties are bound by or subject to) any arrangement with any labor union or other collective bargaining representative. No Company Employee is, or since December 31, 2009 has been, represented by any labor union or covered by any collective bargaining agreement in his or her capacity as an employee of the Company or its Subsidiaries and, to the Knowledge of the Company, no informal or formal efforts or campaign to establish such representation is in progress. With respect to the Company and its Subsidiaries, there is no pending or, to the Knowledge of the Company, threatened (i) strike, slowdown, picketing, work stoppage or material employee grievance process or (ii) material complaint, grievance or Proceeding against the Company or any of its Subsidiaries relating to the alleged violation by the Company or any of its Subsidiaries of any Law pertaining to labor relations or employment matters, including any such charge or complaint filed by a Company Employee or union with the National Labor Relations Board, the Equal Employment Opportunity Commission or any comparable Governmental Authority. To the Knowledge of the Company, as of the date hereof, there is no (x) Company Employee or union organizational activity affecting the Company or any of its Subsidiaries, or (y) application for certification of a collective bargaining agent for Company Employees.

(c) The Company and each of its Subsidiaries is and has been, since December 31, 2009, in material compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment, and wages and hours, including any such Laws regarding employment documentation, equal employment opportunities, fair employment practices, plant closings and mass layoffs (including the Worker Adjustment and Retraining Notification Act and similar applicable Laws), sexual harassment, discrimination based on sex, race, disability, health status, pregnancy, religion, national origin, age or other tortious conduct, workers' compensation, family and medical leave, the Immigration Reform and Control Act, and occupational safety and health requirements. Neither the Company nor any of its Subsidiaries is liable for the payment of any material compensation, damages, Taxes, fines, penalties or other amounts, however designated, for failure to comply with any of the foregoing.

(d) Except as set forth on Schedule 3.9(d), as of the date hereof, there are no claims, disputes, grievances, controversies, or other actions pending or, to the Knowledge of the Company, threatened before any Governmental Authority or arbitration tribunal between the Company or any of its Subsidiaries and any of their respective present or former Company Employees.

(e) All Persons classified by the Company and its Subsidiaries as non-employees, including but not limited to independent contractors, consultants or otherwise, do and have satisfied since December 31, 2009 the requirements of Law to be so classified, and the Company and each of its Subsidiaries has fully and accurately reported its compensation on IRS Forms 1099 when required to do so, except, in each case, as would not result in a material Liability of the Company and its Subsidiaries (taken as a whole). Similarly, all Company Employees classified as “exempt” do and have satisfied since December 31, 2009 the requirements of Law to be so classified, except, in each case, as would not result in a material liability of the Company. Without limiting the generality of the foregoing, no individual who has performed services for or on behalf of the Company or any of its Subsidiaries since December 31, 2009 and who has been treated by the Company or any of its Subsidiaries as a non-employee, whether as an independent contractor, consultant or otherwise since December 31, 2009, is classifiable as a “leased employee” within the meaning of Section 414(n)(2) of the Code with respect to the Company or any of its Subsidiaries, except, in each case, as would not result in a material Liability of the Company and its Subsidiaries (taken as a whole).

(f) To the Knowledge of the Company, no third party has claimed any Company Employee (i) has violated or may be violating any of the terms or conditions of his employment, non-competition, non-solicitation or non-disclosure agreement with such third party, (ii) has or may have disclosed or utilized any trade secret or proprietary information or documentation of such third party, or (iii) has interfered or may be interfering in the employment relationship between such third party and any of its present or former employees. To the Knowledge of the Company, no Person employed by the Company or any of its Subsidiaries has employed any trade secret or any information or documentation proprietary to any former employer or violated any confidential relationship that such Person may have had with any third party, in connection with the development, manufacture or sale of any Product or proposed Product or the development or sale of any service or proposed service of the Company or any of its Subsidiaries.

(g) Schedule 3.9(g) lists all Company Employees who are currently on leave relating to work-related injuries and/or receiving disability benefits under any Benefit Plan. Schedule 3.9(g) also lists all Company Employees who are on a leave of absence (whether paid or unpaid), the nature of the leave of absence (such as military leave or medical leave), the expected return date, and whether reinstatement of each Company Employee on a leave of absence is guaranteed by Contract or applicable Laws (including the Family and Medical Leave Act).

3.10 Taxes. Except as disclosed on Schedule 3.10:

(a) The Company and each of its Subsidiaries have filed (or has had filed on its behalf) on a timely basis all Tax Returns it is required to have filed and all such Tax Returns are correct and complete in all respects.

(b) All Taxes required to have been paid by the Company and its Subsidiaries (whether or not shown on any Tax Return) have been paid on a timely basis. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has any material Liability with respect to Taxes in excess of the amounts accrued with respect thereto that are reflected in the Year-End Financials, except for any Liability with respect to such Taxes that has been incurred in the ordinary course of business since the date of such Financial Statements. Neither the Company nor any of its Subsidiaries has participated in a “Tax amnesty” or similar program offered by any Taxing Authority to avoid the assessment of any Tax.

(c) No written claim has been received since December 31, 2012 by the Company or any of its Subsidiaries from a Taxing Authority for a jurisdiction that the Company or any of its Subsidiaries is or may be subject to taxation by that jurisdiction or has an obligation to file Tax Returns, in each case with respect to any Tax of a type for which the Company or any of its Subsidiaries did not file a Tax Return with, or pay Tax imposed by, such jurisdiction for the most recently ended taxable period for which such a Tax payment or Tax Return was due.

(d) There is no audit or other Proceeding presently pending or threatened in writing with regard to any Tax Liability or Tax Return of the Company or any of its Subsidiaries or any Seller Party or Tax Owner relating to any of the Company's Subsidiaries (other than any Seller Party who has never owned more than 40% of any of the Company's Subsidiaries). To the Knowledge of the Company, there are no disclosures filed with any Taxing Authority relating to any Tax Returns of any of the Company's Subsidiaries or inconsistency between Tax reporting positions with respect to the Company's Subsidiaries that reasonably may be expected to result in the assertion of any claim by any Taxing Authority with respect to any taxable period for which Tax Returns are required to have been filed or Tax is required to have been paid by or with respect to the Company or its Subsidiaries.

(e) Neither the Company nor any of its Subsidiaries has been a beneficiary of or participated in any "reportable transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(1) that was, is or, to the Knowledge of the Company, will be required to be disclosed under Treasury Regulations Section 1.6011-4.

(f) Neither the Company nor any of its Subsidiaries (i) is a party to any currently effective Tax sharing agreement, or similar agreement regarding the allocation of Tax attributes, exemptions, or liabilities or any agreement under which the Company or any of its Subsidiaries agreed to pay, reimburse or indemnify any other Person for Taxes that may be imposed on such Person, or (ii) has any obligation to any other Person under such an agreement to which it previously had been a party.

(g) Since January 1, 2014, neither the Company nor any of its Subsidiaries has taken any action not in accordance with past practice that would have the effect of deferring any material measure of Tax from a period (or portion thereof) ending on or before the Closing Date to a period (or portion thereof) beginning after the Closing Date.

(h) Neither the Company nor any of its Subsidiaries has a "permanent establishment" in any foreign country, as defined in any applicable Tax treaty or convention between the United States of America and such foreign country, and has not otherwise taken steps or conducted business operations that have exposed it to the taxing jurisdiction of a foreign country.

(i) Neither the Company nor any of its Subsidiaries (i) has ever been a party to any joint venture, partnership or other agreement or arrangement that was or is treated or required to be treated as a partnership for federal income Tax purposes other than such an entity all of the ownership interest were owned, directly or indirectly, solely by the Members or (ii) has ever owned any interest in an entity (other than the Company's Subsidiaries) that either was or is treated or required to be treated as an entity disregarded as separate from its owner for federal Tax purposes or is an entity as to which an election pursuant to Treasury Regulations Section 301.7701-3 has been made. At all times since its formation, each of the Company and its Subsidiaries has been validly treated as a partnership for federal tax purposes pursuant to Treasury Regulations Section 301.7701-3(b)(1)(i) at any time when it had more than two owners, and at all other times validly treated as an entity disregarded as separate from its owner for federal Tax purposes pursuant to Treasury Regulations Section 301.7701-3.

3.11 Property.

(a) Schedule 3.11(a) sets forth a complete and accurate list of each real property owned by the Company or one of its Subsidiaries (the "Owned Company Properties"). Except as set forth on Schedule 3.11(a), the Company, or a Subsidiary, as the case may be, holds good and marketable fee title to each Owned Company Property free and clear of all Encumbrances (other than Permitted Encumbrances). The Company has delivered to Buyer true, correct and complete copies of all title policies and most current surveys in its possession for the Owned Company Properties.

(b) Except as previously disclosed to Buyer, none of the Company or any of its Subsidiaries is in receipt of any written notice of any existing, uncured violation of any material Law affecting any of the Owned Company Properties. No part of any Owned Company Property is subject to any building or use restrictions that would materially prevent or materially restrict the ongoing use and operation of the Company as currently operated.

(c) Except as previously disclosed to Buyer: (i) no rezoning proceedings are pending or threatened in writing with respect to any of the Owned Company Properties, (ii) the Company has not received written notice of any uncured violations of any zoning, building or similar Law regarding any of the Owned Company Properties, (iii) there does not exist any actual or threatened (in writing) condemnation or eminent domain proceedings that materially and adversely affects any Owned Company Property and (iv) no Governmental Authority has issued any written order or directive to the Company or its Subsidiaries requiring any improvements, additions, alternations, repair or construction to be performed on any Owned Company Property.

(d) No Owned Company Property or portion thereof has suffered any material damage by fire or other casualty that has not heretofore been substantially restored, or for which adequate insurance proceeds are not available for restoration and for rent loss. If any portion of any Owned Company Property is located in a special flood hazard area, the Company has maintained or caused to be maintained flood hazard insurance as required by any lender with a security interest in said Owned Company Property.

(e) Except as previously disclosed to Buyer, neither Company nor any Subsidiary is obligated under or a party to, any option, right of first refusal or other contractual right to sell, assign or dispose of any Owned Company Property or any material portion thereof or material interest therein.

(f) Each Owned Company Property has access to a publicly dedicated right-of-way, either directly or through a valid interest under private easements. All utility systems required in connection with use, occupancy and operation of the Owned Company Property are supplied to each Owned Company Property, in working order (subject to ordinary maintenance and repair and ordinary wear and tear). There are no due and payable assessments owing by the Company or its Subsidiaries for such utilities, other than ordinary utility bills tied to the usage of utilities, due and payable in the ordinary course.

(g) All material components of the improvements included within the Owned Company Properties (including the roofs and structural elements thereof and the heating, ventilation, air conditioning, plumbing, electrical, mechanical, sewer, waste water, storm water, paving and parking equipment, systems and facilities included therein), which are the responsibility of the Company and its Subsidiaries, are in working order (subject to ordinary maintenance and repair and ordinary wear and tear).

(h) Schedule 3.11(h) sets forth an accurate and complete list of all real property leased by the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries has any leasehold rights and which involve annual rental payments from the Company or any of its Subsidiaries in excess of \$25,000 (collectively, the "Facilities"). True, complete and correct copies of all leases of Facilities to which the Company or any of its Subsidiaries is a party have been delivered to the Buyer, together with all material amendments, modifications, supplements and side letters affecting the obligations of any party thereunder. The Company or a Subsidiary, as the case may be, holds a valid leasehold interest in each Facility (or portion thereof used by the Company) free and clear of all liens other than Permitted Encumbrances. All leases required to be set forth on Schedule 3.11(h) are in full force and effect against the Company or its Subsidiaries, as applicable, and, to the Knowledge of the Company, the other party or parties thereto, and constitute valid and binding agreements of the Company or its Subsidiaries, as applicable, and, to the Knowledge of the Company, the other party or parties thereto in accordance with their respective terms, except, in each case, as enforceability may be limited by the Bankruptcy and Equity Exceptions. There is no material default or alleged material default, under any lease set forth on Schedule 3.11(h) either by the Company or its Subsidiaries or, to the Knowledge of the Company, by any other party thereto. No representation or warranty is made herein regarding the status of the fee title (and any matters pertaining to such fee title) of any real property subject to the leases to which the Company or its Subsidiaries is a party; it being understood and agreed that the provisions of this Section 3.11, as they relate to the title to the Facilities, pertain only to the leasehold interest of the Company or its Subsidiaries thereto. Except as previously disclosed to Buyer, none of the Company or any of its Subsidiaries is in receipt of any written notice of any existing, uncured violation of any material Law affecting any of the Facilities. To the Knowledge of the Company, no part of any Facility is subject to any building or use restrictions that would prevent or materially restrict the ongoing use and operation of the Company as currently operated. No consent is required by any party in order to transfer or assign the Company's or a Subsidiary's (as the case may be) interest in any lease listed on Schedule 3.11(h) to Buyer.

(i) Schedule 3.11(i) sets forth list of all personal property owned or leased by the Company or any of its Subsidiaries as of the Balance Sheet Date, in each case valued in excess of One Hundred Thousand Dollars (\$100,000). True, complete and correct copies of all leases of personal property and equipment listed on Schedule 3.11(i) have been delivered to the Buyer. All of the personal property and equipment listed on Schedule 3.11(i) (excluding parts or equipment that are being serviced or repaired or have been decommissioned in the ordinary course of business) is in good working order and condition, ordinary wear and tear excepted. Except as set forth on Schedule 3.11(i), the Company and its Subsidiaries have good and marketable title to, or valid right to use, all tangible personal property and equipment that the Company or its Subsidiaries purport to own, other than to the extent disposed of in the ordinary course of business, all of which are held free and clear of any and all Encumbrances (other than Permitted Encumbrances). The Company's and its Subsidiaries' assets (including leasehold interests), taken together, are sufficient for the operation of their business as currently conducted and will be sufficient for the operation of their business immediately after the Closing. To the Knowledge of the Company, there are no facts or conditions affecting the Company's or any of its Subsidiaries' assets that is, individually or in the aggregate, reasonably expected to interfere in any material respect with the use, occupancy or operation thereof as current used, occupied or operated by the Company or its Subsidiaries, or their adequacy for such use.

(j) Schedule 3.11(j) sets forth a complete and accurate list of all aircraft owned by the Company and its Subsidiaries, together with their associated engines (the "Aircraft"). Except as set forth on Schedule 3.11(j), the Company owns all rights, titles and interests to the Aircraft, free and clear of all Encumbrances other than Permitted Encumbrances.

(k) Except as set forth on Schedule 3.11(k), the Aircraft are in an airworthy condition suitable for operations under Parts 91 or Part 135 of the Federal Aviation Regulations, with all material systems and material installed equipment and engines (excluding parts or equipment that are being serviced or repaired or have been decommissioned in the ordinary course of business) in normal working order, ordinary wear and tear excepted, and materially operating to manufacturers' specifications, without any material deferments, extensions or increased frequency of inspection, and with each engine able to produce its rated takeoff power in a ground power run.

(l) Except as set forth on Schedule 3.11(l), each Aircraft has been maintained in all material respects in accordance with all manufacturers' recommended maintenance and inspection schedules (including all calendar and hourly inspections), and in material compliance with all applicable FAA's airworthiness directives and manufacturers' service bulletins (or equivalents), that have been issued with respect to such Aircraft on or before the date hereof.

(m) Except as set forth on Schedule 3.11(m), with respect to each Aircraft, (i) there is no corrosion or damage and no history of corrosion or damage, in each case, that would render such Aircraft in an otherwise but airworthy condition and (ii) no parts, systems or components have been installed in the Aircraft on a temporary loan or exchange basis.

(n) Except as set forth on Schedule 3.11(n), the Company has in its possession, or maintains the right to inspect, all original versions of all material Aircraft Documents. All material Aircraft Documents are complete, continuous and up-to-date, printed or published in English, and maintained in material accordance with industry standards and the Federal Aviation Regulations.

3.12 Litigation. Except as set forth on Schedule 3.12, there is no Proceeding pending or threatened in writing against the Company, any of its Subsidiaries or their assets before any court, agency, authority or arbitration tribunal, in each case, other than workers' compensation claims and routine claims for benefits under Benefit Plans and insignificant claims in the ordinary course of business. To the Knowledge of the Company, there are no facts that would likely result in any such Proceeding (excluding any such Proceedings believed in good faith by Company management to be meritless) and none of the officers or other employees of the Company and its Subsidiaries, in their capacity as such, is subject to or in default with respect to any notice, order, writ, injunction or decree of any Governmental Authority or arbitration tribunal, in each case, which is material to the operation by the Company of its business.

3.13 Compliance with Laws. The Company and each of its Subsidiaries has complied in all material respects at all times since December 31, 2008 and is currently in compliance in all material respects with all Laws and other requirements and policies applicable to the Company or its Subsidiaries imposed by any Governmental Authority, including, but not limited to, the Federal Aviation Act, the False Claims Act, the anti-fraud provisions of the Contract Disputes Act, the Small Business Act, the Anti-Kickback Act, the Federal Election Campaign Act, the Sherman Act, the Clayton Act, the Truth in Negotiations Act, the Services Contract Act, the Procurement Integrity Act, and the Byrd Amendment (31 U.S.C. § 1352). The Company and its Subsidiaries have all material licenses, permits, approvals, qualifications or the like, from any Governmental Authority necessary for the conduct of their businesses as currently conducted, all such items are in full force and effect and the Company and each of its Subsidiaries is and has at all times since December 31, 2012 been in compliance in all material respects with the terms thereof. Schedule 3.13 sets forth all material licenses and material permits held by the Company and its Subsidiaries and designates such licenses and permits that terminate or become renewable at any time prior to the first anniversary of the date of this Agreement. To the Knowledge of the Company, there are no facts or circumstances in existence that are reasonably likely to prevent the Company or any of its Subsidiaries from renewing each such license and permit. Since December 31, 2012, neither the Company nor any of its Subsidiaries has received any written allegations from employees, consultants or independent contractors with respect to any material noncompliance with Law, or has conducted or initiated any internal investigation or made a voluntary or involuntary disclosure to any Governmental Authority with respect to any material noncompliance with Law. Since December 31, 2012, neither the Company nor any of its Subsidiaries has received any written notice or written citation for any actual or potential material noncompliance with any of the foregoing in this Section 3.13 and, to the Knowledge of the Company, there exists no condition, situation or circumstance that, after notice or lapse of time, or both, would constitute noncompliance with or give rise to future Liability with regard to any of the foregoing in this Section 3.13.

3.14 Government Contracts and Bids.

(a) Schedule 3.14(a) lists, with respect to the Company and each of its Subsidiaries, all: (i) Government Contracts the period of performance of which has not yet expired or terminated or is subject to audit in accordance with its terms or for which final payment has not yet been received (the “Current Government Contracts”); (ii) quotations, bids and proposals for awards of new Government Contracts made by the Company or its Subsidiaries for which no award has been made and for which the Company believes there is a reasonable prospect that such an award to the Company or any of its Subsidiaries may yet be made (the “Government Contract Bids”); and (iii) Government Contracts pursuant to which the Company or any of its Subsidiaries is currently or is reasonably expected to experience cost, schedule, technical or quality problems that is reasonably expected to result in a claim or claims against the Company or any of its Subsidiaries (or its successors in interest) by a Governmental Authority, a prime contractor or a higher-tier subcontractor, in each case, except as would not result in suspension, debarment or economic damages greater than \$100,000. With respect to each Current Government Contract, Schedule 3.14(a) accurately lists (A) the contract number, (B) the award date and (C) the contract end date. With respect to each such Government Contract Bid, Schedule 3.14(a) accurately lists: (A) the request for proposal (RFP) number or, if such Government Contract Bid is for a task order under a prime contract, the applicable prime contract number; (B) the date of proposal submission; (C) the expected award date, if known; (D) the estimated period of performance; and (E) the estimated value based on the proposal, if any. The Company has delivered to the Buyer true and complete copies of all Current Government Contracts and of all Government Contract Bids, including any and all amendments and other modifications thereto and has provided the Buyer with access to true and correct copies of all documentation related thereto requested by the Buyer. All of the Current Government Contracts were legally awarded, are binding on the parties thereto, and are in full force and effect. The Current Government Contracts (or, where applicable, the prime Government Contracts under which the Current Government Contracts were awarded) are not currently the subject of bid or award protest Proceedings, and to the Knowledge of the Company, no such Current Government Contracts (or, where applicable, the prime Government Contracts under which the Current Government Contracts were awarded) are reasonably likely to become the subject of bid or award protest Proceedings. No Person has notified the Company or any of its Subsidiaries in writing or, to the Knowledge of the Company, orally that any Governmental Authority, prime contractor or higher-tier subcontractor under a Current Government Contract intends to seek the Company’s or any of its Subsidiaries’ agreement to lower rates under such Current Government Contract or Government Contract Bids, including any task order under any Government Contract Bids.

(b) The Company and each of its Subsidiaries has complied in all material respects with all terms and conditions of each Current Government Contract and Government Contract Bid to which it is a party, and has performed in all material respects all obligations required to be performed by it thereunder. The Company and each of its Subsidiaries has complied with all statutory and regulatory requirements to which it is subject, including under the Armed Services Procurement Act, the Federal Procurement and Administrative Services Act, the Truth in Negotiations Act, any Federal Acquisition Regulation (“FAR”), any applicable agency-specific FAR supplement or acquisition regulation and related cost principles and the Cost Accounting Standards, where and as applicable to each of the Current Government Contracts and the Government Contract Bids, except such non-compliance or non-performance as would not result in any material liability to the Company or any of its Subsidiaries. The representations, certifications and warranties made by the Company and each of its Subsidiaries with respect to the Government Contracts or Government Contract Bids were accurate as of their effective dates, and the Company and each of its Subsidiaries has fully complied in all material respects with all such certifications. Neither the Company nor any of its Subsidiaries has received, in writing or, to the Knowledge of the Company, orally, a substantially adverse or negative government past performance evaluation or rating that is reasonably expected to adversely affect the evaluation by the Governmental Authority or other potential customer of the Company’s or any of its Subsidiaries’ bids or proposals for future Government Contracts.

(c) With respect to the Current Government Contracts, since December 31, 2008, no Governmental Authority, prime contractor or higher-tier subcontractor under a Government Contract or any other Person has notified the Company or any of its Subsidiaries in writing, or to the Knowledge of the Company, orally, of any actual or alleged material violation or breach by the Company or any of its Subsidiaries of any statute, regulation, representation, certification, disclosure obligation, contract term, condition, clause, provision or specification under or with respect to the Procurement Integrity Act, the Service Contract Act, the Trade Agreements Act and the Buy American Act.

(d) Other than as set forth on Schedule 3.14(d), none of the Current Government Contracts or Government Contract Bids are premised upon the Company's or any of its Subsidiaries' small business status, small disadvantaged business status, protégé status, or other preferential status, nor did any Governmental Authority, or to the knowledge of the Company, prime contractor or higher-tier subcontractor under a Current Government Contract rely upon the Company's or any of its Subsidiaries' small business status, small disadvantaged business status, protégé status, or other preferential status in evaluating any of the Company's or any of its Subsidiaries' quotations, bids or proposals, or in making award of any Current Government Contract to the Company or any of its Subsidiaries. Each representation and/or certification made by the Company or any of its Subsidiaries that it was a small business concern and/or was qualified for other preferential status in each of its Government Contracts and Government Contract Bids was current and accurate as of its effective date. Neither the Company nor any of its Subsidiaries has been required to recertify its small business status, small disadvantaged business status, protégé status or other preferential status in connection with the submission or any proposal for, or award of, any Contract or task order, delivery order, purchase order or subcontract issued related to any small-business set-aside Contract. Schedule 3.14(d) identifies the set-aside basis and the applicable NAICS codes that apply to the work being provided.

(e) Neither the Company nor any of its Subsidiaries is party to any litigation or, to the Knowledge of the Company, has taken any action that is reasonably expected to give rise to (i) Liability under the False Claims Act, (ii) a claim for price adjustment under the Truth in Negotiations Act or (iii) any other request for a reduction in the price of any Government Contracts, including claims based on actual or alleged defective pricing or actual or alleged violations of price reduction clauses or provisions. To the Knowledge of the Company, there exists no basis for a claim of any Liability of the Company or its Subsidiaries by any Governmental Authority as a result of defective cost and pricing data submitted to any Government Authority. Neither the Company nor any of its Subsidiaries has received in writing, or to the Knowledge of the Company, orally, any allegations from employees, consultants or independent contractors with respect to any alleged act or omission that would reasonably be expected to give rise to (i) Liability under the False Claims Act, (ii) a claim for price adjustment under the Truth in Negotiations Act or (iii) any other request for a reduction in the price of any Government Contracts, including to claims based on actual or alleged defective pricing. Neither the Company nor any of its Subsidiaries has conducted or initiated any internal investigation or made a voluntary or involuntary disclosure to any Governmental Authority with respect to (i) Liability under the False Claims Act, (ii) a claim for price adjustment under the Truth in Negotiations Act, or (iii) any other request for a reduction in the price of any Current Government Contracts, including claims based on actual or alleged defective pricing.

(f) Except as described in Schedule 3.14(f): (i) neither the Company nor any of its Subsidiaries has received any written or, to the Knowledge of the Company, oral show cause, cure, deficiency, default or similar notice relating to Current Government Contracts; (ii) no termination for default, cure notice or show cause notice has been issued or, to the Knowledge of the Company, threatened and remains unresolved with respect to any Current Government Contract or Government Contract Bid, and, to the Knowledge of the Company, no event, condition or omission has occurred or exists that would constitute grounds for such action; (iii) no past performance evaluation received by the Company or any of its Subsidiaries with respect to any such Government Contract sets forth a material default or other material failure to perform thereunder or termination or default thereof; (iv) there has not been any material withholding or setoff under any Current Government Contract; and (v) all invoices and claims (including requests for progress payments and provisional costs payments) submitted under each Current Government Contract were accurate and complete in all material respects as of their submission date and (vi) none of the execution, delivery or performance of the Transaction Documents does or will conflict with or result in a breach of or default under any Government Contract or cause a termination of any Government Contract due to loss of preferential status. Neither the Company nor any of its Subsidiaries has received any written or, to the Knowledge of the Company, oral notice terminating any of the Current Government Contracts for convenience or indicating an intent to terminate any of the Current Government Contracts for convenience.

(g) Neither the Company nor any of its Subsidiaries has received any written or, to the Knowledge of the Company, oral notice of any outstanding claims or Contract disputes to which the Company or any of its Subsidiaries is a party (i) relating to the Current Government Contracts or Government Contract Bids and involving a Governmental Authority or any prime contractor, higher-tier subcontractor, vendor or other third party or (ii) relating to the Current Government Contracts under the Contract Disputes Act or any other federal statute.

(h) During the six (6) year period ending on the date hereof, (A) none of the Company, any of its Subsidiaries, Members or their respective managers, trustees, directors, officers, or, to the Knowledge of the Company, employees, in each case in connection with the performance of their duties for or on behalf of the Company, any of its Subsidiaries or the Members has been debarred, suspended or proposed for suspension or debarment from bidding on any Government Contract, declared nonresponsible or ineligible or otherwise excluded from participation in the award of any Government Contract, or for any reason listed on the System for Award Management as parties excluded from Federal Procurement and Non-procurement Programs; and (B) no debarment, suspension or exclusion Proceeding has been initiated against the Company, any of its Subsidiaries, the Members or any of their respective managers, trustees, directors, officers, or, to the Knowledge of the Company, employees in connection with the performance of their duties for or on behalf of the Company, any of its Subsidiaries or the Members. To the Knowledge of the Company, no circumstances exist that would warrant the institution of suspension or debarment Proceedings against the Company, any of its Subsidiaries, any of the Members or any of their Representatives in connection with the performance of their duties for or on behalf of the Company or any of its Subsidiaries.

- (i) To the Knowledge of the Company, within the last six (6) years, no negative determination of responsibility has been issued against the Company or any of its Subsidiaries with respect to any quotation, bid or proposal for a Government Contract.
- (j) Other than as set forth on Schedule 3.14(j), except for any audit, inspection, investigation, or examination of a Government Contract or Government Contract Bid in the ordinary course of business and not with respect to any questioned costs or cost disallowance, irregularity, misstatement or omission arising under or relating to any Government Contract or Government Contract Bid, within the last six years (i) neither the Company nor any of its Subsidiaries has undergone, nor is it currently undergoing, any audit, review, inspection, investigation, survey or examination of records relating to any Government Contracts, (ii) neither the Company nor any of its Subsidiaries has received written notice of, and neither the Company nor any of its Subsidiaries has undergone, any investigation or review relating to any Government Contract, (iii) no such audit, review, inspection, investigation, survey or examination of records is threatened in writing or, to the Knowledge of the Company, pending, (iv) neither the Company nor any of its Subsidiaries has received in writing or, to the Knowledge of the Company, orally, any official notice that it is or was being specifically audited or investigated by the Government Accountability Office, the Defense Contract Audit Agency of the United States Government (the "DCAA"), the U.S. Congress, any state or federal agency Inspector General, the contracting officer with respect to any Government Contract, or the Department of Justice (including any United States Attorney), and (v) neither the Company nor any of its Subsidiaries has received any written, or, to the Knowledge of the Company, oral notice that any audit, review, inspection, investigation, survey or examination of records has revealed any fact, occurrence or practice that is reasonably expected to materially and adversely affect the Company or any of its Subsidiaries.
- (k) Within the last six years (i) except for routine audits in the ordinary course of business, neither the Company nor any of its Subsidiaries has conducted any internal investigation or audit in connection with which the Company or any of its Subsidiaries has used any legal counsel, auditor, accountant or investigator; and (ii) neither the Company nor any of its Subsidiaries has made any disclosure to any Governmental Authority (as would be required under 48 C.F.R. § 52.203-13) other customer, or any prime contractor or higher-tier subcontractor related to any suspected, alleged or possible violation of a Contract requirement, any apparent or alleged irregularity, misstatement or omission arising under or relating to a Government Contract or Government Contract Bid, or any violation of Law or regulation.

(l) Neither the Company nor any of its Subsidiaries performs any activities under Current Government Contracts, or has any other relationships with any other Person, that qualify as or is reasonably expected to result in an “organizational conflict of interest” as defined in Subpart 9.5 of the Federal Acquisition Regulation and agency supplements thereto, or Section 207 of the Weapon Systems Reform Act of 2009.

(m) Neither the Company nor any of its Subsidiaries has been charged with, or received or been advised in writing or, to the Knowledge of the Company, orally of any charge, investigation, claim or assertion of, nor has the Company, any of its Subsidiaries, or any of their respective trustees, directors, officers or, to the Knowledge of the Company, employees in their capacities as such, been subject to any criminal indictment, lawsuit, subpoena, civil investigative demand, discovery request, administrative Proceeding, mandatory disclosure, claim, dispute, mediation or arbitration with regard to, any material violation of any requirement pertaining to a Current Government Contract or Government Contract Bid, including material violations of any statutory or regulatory requirements or violations of any Laws relating thereto.

(n) Neither the Company nor any of its Subsidiaries is participating in any pending claim, and, to the Knowledge of the Company, there is no potential claim against the Company or any of its Subsidiaries, under the Contract Disputes Act against or by the United States Government; nor to the Knowledge of the Company is there any claim against or by any prime contractor, subcontractor or vendor arising under or relating to any Government Contract or Government Contract Bid.

(o) All Indirect Cost rates are being billed consistent with DCAA-approved rates or provisional rate agreements or Indirect Cost schedules published by DCAA.

(p) The Company and each of its Subsidiaries is in compliance with all applicable national security obligations, including those specified in the National Industrial Security Program Operating Manual, DOD 5220.22-M (January 1995), and any supplements, amendments or revised editions thereof, designated by the Cognizant Security Agency.

(q) To the Knowledge of the Company, there are no events or omissions that are reasonably expected to result in (i) a material claim against the Company or any of its Subsidiaries by a Governmental Authority or any prime contractor, subcontractor, vendor or other third party arising under or relating to any Government Contract or Government Contract Bid or (ii) a material dispute between the Company or any of its Subsidiaries, on the one hand, and a Governmental Authority or any prime contractor, subcontractor, vendor or other third party, on the other hand, arising under or relating to any Government Contract or Government Contract Bid.

(r) No Current Government Contract has incurred costs materially in excess of the total ceiling price, cost ceiling or funding ceiling of such Government Contract as amended (each, an “overrun”). No payment has been made by the Company or any of its Subsidiaries or by a Person acting on the Company’s or any of its Subsidiaries’ behalf to any Person (other than to any bona fide employee or agent of the Company or any of its Subsidiaries, as defined in subpart 3.4 of the Federal Acquisition Regulation), that is or was contingent upon the award of any Government Contract or that would otherwise be in violation of any applicable procurement Law or regulation or any other Laws. Neither the Company nor any of its Subsidiaries is subject to any “forward pricing” agreements or regulations not otherwise approved in accordance with FAR Subpart 42.17.

- (s) Neither the Company nor any of its Subsidiaries has assigned or otherwise conveyed or transferred, or agreed to assign or otherwise convey or transfer, to any Person any Government Contract or any account receivable relating thereto, whether as a security interest or otherwise.
- (t) No material personal property, equipment or fixtures are loaned, bailed or otherwise furnished to the Company or any of its Subsidiaries by or on behalf of the United States Government.
- (u) No written claims, or claims threatened in writing, or to the Knowledge of the Company, oral pending or threatened claims, exist against the Company or any of its Subsidiaries with respect to express warranties and guarantees contained in Government Contracts on products or services provided by the Company or any of its Subsidiaries; and no such claims have been made against the Company or any of its Subsidiaries. No amendment has been made to any written warranty or guarantee contained in any Government Contract that is reasonably expected to result in an adverse effect on the Company or any of its Subsidiaries. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has taken any action that is reasonably expected to give any Person a right to make a claim under any written warranty or guarantee contained in any Government Contract.
- (v) Except to the extent prohibited by applicable Law, Schedule 3.14(v) sets forth all facility security clearances held by the Company and its Subsidiaries.
- (w) Neither the Company nor any of its Subsidiaries or officers, nor, to the Knowledge of the Company, any of the employees or agents of the Company or any of its Subsidiaries, has violated any legal, administrative or contractual restriction concerning the employment of (or discussions concerning possible employment with) current or former officials or employees of a state, local or federal government (regardless of the branch of government), including the so-called "revolving door" restrictions set forth at 18 U.S.C. § 207.
- (x) Neither the Company nor any of its Subsidiaries or officers, nor, to the Knowledge of the Company, any of the employees or agents of the Company or any of its Subsidiaries, has committed (or taken any action to promote or conceal) any violation of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, -2.
- (y) All Direct Costs incurred by the Company or its Subsidiaries pursuant to any existing subcontract agreements under any Government Contract shall be allowable in accordance with the applicable FAR or agency supplement thereto and, to the extent applicable, allocable in accordance with the Cost Accounting Standards. All Company costs (both Direct Costs and/or Indirect Costs) that have been, prior to the Closing, charged to a Governmental Authority under any Government Contract shall be allowable in accordance with the applicable FAR or agency supplement thereto and, to the extent applicable, allocable in accordance with the Cost Accounting Standards (except for costs properly charged to a reserve account appearing on the Balance Sheet). Within the last six years, no Direct Costs and/or Indirect Costs charged to any Governmental Authority under a Government Contract have been or to the Knowledge of the Company are reasonably likely to be disallowed.

(z) The Company and each of its Subsidiaries is in compliance in all material respects with the Federal Acquisition Regulation ethical rules and suspension/debarment regulations (the "FAR Ethics Rules") as applicable to the Company or its Subsidiaries by virtue of Current Government Contracts. The Company and each of its Subsidiaries has undertaken the appropriate level of review or investigation to determine whether the Company or any of its Subsidiaries is required to make any disclosures to any Governmental Authority under the FAR Ethics Rules. To the Knowledge of the Company, there exist no facts or circumstances that, with the passage of time or the giving of notice or both, would constitute a material violation of the FAR Ethics Rules.

(aa) None of the Current Government Contracts constitute multiple award schedule Government Contracts.

(bb) The Company and each of its Subsidiaries, and to the Knowledge of the Company, each of their respective employees, has complied in all material respects with all timekeeping/time recordation requirements of the applicable Government Contracts, and to the Knowledge of the Company, there are no facts or circumstances that would reasonably be expected to result in an investigation by the U.S. Government based upon the Company's or any of its Subsidiaries' failure to comply with such applicable timekeeping/time recordation requirements.

(cc) All personnel who performed or are currently performing under any Government Contract met or meet all express qualification requirements for the labor categories under which they have been charged, or are being charged. All personnel listed in any Government Contract Bid or other bid, offer, or proposal meet all applicable material requirements set forth in the applicable solicitation. Neither the Company nor any of its Subsidiaries has replaced any personnel performing a Government Contract without obtaining all required approvals from the applicable Governmental Authority and any other party whose consent is required for replacement of personnel under such Government Contract.

3.15 Export Control Laws. Each of the Company and its Subsidiaries is and has at all times since December 31, 2008, been in compliance in all material respects with all Export Control Laws applicable to it. Without limiting the foregoing: (a) each of the Company and its Subsidiaries has obtained all material export licenses and other material approvals required for its exports of products, Software and technologies required by any Export Control Law and all such approvals and licenses are in full force and effect; (b) each of the Company and its Subsidiaries is in material compliance with the terms of such applicable export licenses or other approvals and (c) there are no claims pending or threatened in writing against the Company or any of its Subsidiaries with respect to such export licenses or other approvals. Schedule 3.15 sets forth the true, complete and accurate listing of the export control classification numbers under the applicable Export Control Laws applicable to the Company's products, software and technologies, indicating the basis for each such classification.

3.16 Anti-Corruption Laws; Certain Regulatory Matters.

(a) The Company and each of its Subsidiaries, including its directors, officers, employees, have not, in the past five (5) years either (1) violated any Anti-Corruption Laws or (2) to the direct or indirect benefit the Company or any of its Subsidiaries, offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, including but not limited to cash, checks, wire transfers, tangible and intangible gifts, favors, services, and those entertainment and travel expenses that go beyond what is reasonable and customary and of modest value:

(i) to any FCPA Government Official, whether directly or through any other Person, for the purpose of: (A) influencing any act or decision of a FCPA Government Official in his or her official capacity; (B) inducing a FCPA Government Official to do or omit to do any act in violation of his or her lawful duties; (C) securing any improper advantage; (D) inducing a FCPA Government Official to influence or affect any act or decision of any FCPA Governmental Authority; or (E) assisting any FCPA Government Official in obtaining or retaining business for or with, or directing business to, the Company, in each case, in violation of any Anti-Corruption Law;

(ii) to any Person under circumstances in which the Company and each of its Subsidiaries, including its directors, officers, employees, knew or had reason to know that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any FCPA Government Official for any purpose set forth in Section 3.16(a)(i) to directly or indirectly benefit the Company or any of its Subsidiaries; or

(iii) to any Person in a manner which would constitute or have the purpose or effect of public or commercial bribery, or the acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage in violation of any Anti-Corruption Law.

(b) The Company and each of its Subsidiaries, has not, either (i) conducted or initiated any audit, or internal investigation or made a voluntary, directed, or involuntary disclosure to any Governmental Authority responsible for enforcing Anti-Corruption Laws, in each case with respect to any alleged act or omission arising under or relating to noncompliance with any Anti-Corruption Law or (ii) received any written notice, request, or citation from any Governmental Authority alleging noncompliance with any Anti-Corruption Law.

(c) The Company and each of its Subsidiaries has devised and maintained a system of internal accounting controls sufficient to provide reasonable assurance that transactions are executed and access to assets is permitted only in accordance with the Companies' applicable policies and procedures and management's general or specific authorization.

3.17 Material Contracts.

(a) Schedule 3.17 sets forth an accurate and complete list of each Material Contract. The Company has provided the Buyer with a true, correct and complete copy of each Material Contract required to be disclosed herein. No Material Contract has been materially breached (with or without notice or lapse of time, or both) or cancelled by the other party, and, to the Knowledge of the Company, there is no anticipated material breach by any other party to any Contract (with or without notice or lapse of time, or both). The Company and each of its Subsidiaries has performed in all material respects all of the obligations required to be performed by it under the Material Contracts and is not in material default under or in material breach of any Material Contract, and, to the Knowledge of the Company, assuming that all notices, filings, approvals and consents set forth on Schedule 3.3 are made or obtained, no event has occurred that with the passage of time or the giving of notice or both would: (i) result in a "default" or "event of default" giving rise to a right of termination or a material breach under any Material Contract by the Company or its Subsidiaries; (ii) give any Person (other than the Company or one of its Subsidiaries) the right to

declare a default” or “event of default” giving rise to a right of termination under any Material Contract; (iii) give any Person (other than the Company or one of its Subsidiaries) the right to accelerate the maturity or performance of any material obligation under any Material Contract; or (iv) give any Person (other than the Company or one of its Subsidiaries) the right to cancel, terminate or materially and adversely to the Company and its Subsidiaries modify any Material Contract. Since the Balance Sheet Date, neither the Company nor any of its Subsidiaries has waived any of its material rights under any Material Contract, nor, to the Knowledge of the Company, does the Company or any of its Subsidiaries have any present expectation or intention of not fully performing any obligation pursuant to any Material Contract. Each Material Contract is legal, valid, binding, enforceable and in full force and effect against the Company or its applicable Subsidiary party thereto and, to the Knowledge of the Company, the other parties thereto, except in each case, as enforceability may be limited by the Bankruptcy and Equity Exceptions and, assuming the filings, notices, approvals and consent set forth on Schedule 3.3 are made or obtained, shall continue as such immediately following the consummation of the Transactions. No Material Contract obligates the Company or any of its Subsidiaries to process, manufacture or deliver products or perform services that are reasonably expected to result in a loss to the Company or any of its Subsidiaries upon completion of performance. Schedule 3.17 contains an accurate and complete description of all material terms of all oral Material Contracts.

(b) No Person is currently renegotiating any amount paid or payable to or by the Company or any of its Subsidiaries under any Material Contract or any other material term or provision of any Material Contract.

3.18 Environmental and Safety Matters. The Company and each of its Subsidiaries has at all times since December 31, 2008 conducted its business in compliance in all material respects with all applicable Environmental Laws. None of the properties currently or formerly owned, leased or operated by the Company or any of its Subsidiaries contain any Hazardous Substance in amounts exceeding the levels permitted by applicable Environmental Laws except, in each case, as would not result in material Liability to the Company. Neither the Company nor any of its Subsidiaries has received any written notices, demand letters or requests for information from any Governmental Authority or other Person that have not heretofore been resolved with such Governmental Authority or other Person, indicating that the Company or any of its Subsidiaries may be in violation of, or liable under, any Environmental Law. There are no Proceedings pending or threatened in writing against the Company or any of its Subsidiaries relating to any violation, or alleged violation, of any Environmental Law (excluding any such Proceedings believed in good faith by Company management to be meritless). No reports have been filed or are required to be filed, by the Company or any of its Subsidiaries concerning the actual or threatened Release of any Hazardous Substance or violation of any Environmental Law that have not heretofore been resolved. No Release or threatened Release of any Hazardous Substance by the Company or any Subsidiary has occurred or is occurring, at, on, under, from or to any property or facility currently or formerly owned, operated or leased by any of the Company or any of its Subsidiaries in violation of any applicable Environmental Law, and no Hazardous Substance is present in, on, under or about, or is migrating to or from any property currently owned, operated or leased by the Company or any of its Subsidiaries or, to the Knowledge of the Company, any property formerly owned, operated or leased by the Company or any of its Subsidiaries, in violation of any applicable Environmental Law, except, in each case, as would not give rise to any material Liability of the Company and its Subsidiaries (taken as a whole). No remediation or investigation of Hazardous Substances is occurring at any property currently owned or operated, or, to the Knowledge of the Company, formerly owned or operated, by the Company or any of its Subsidiaries. Neither the Company and its properties, nor any of the Company's Subsidiaries and their properties, are subject to any Proceeding, settlement, court order, administrative order, judgment or claim asserted in writing and arising under any Environmental Law. There are no liens, declarations or deed restrictions that have arisen or been imposed pursuant to any Environmental Law on any property currently owned by the Company or any of its Subsidiaries, and, to the Knowledge of the Company, no action of any Governmental Authority has been taken or is in process which could subject any of such properties to such liens, declarations or deed restrictions pursuant to any Environmental Law. The Company has provided the Buyer with complete and correct copies of all material studies, reports, surveys, assessments, audits, investigations, analysis, tests, and other similar documents (whether in hard copy or electronic form) in the Company's possession or control reasonably relating to the presence or alleged presence of Hazardous Substances at, on or affecting any real property currently or formerly owned or currently leased or operated by the Company, or regarding the Company's compliance with any applicable Environmental Law.

3.19 Insurance. Schedule 3.19 lists each current insurance policy maintained by or at the expense of the Company or any of its Subsidiaries and any claims made thereunder in the one year period prior to the date hereof. All such insurance policies are in full force and effect, and neither the Company nor any of its Subsidiaries is in default with respect to its obligations under any such insurance policies. Neither the Company nor any of its Subsidiaries has ever been denied insurance coverage since December 31, 2011. The insurance coverage of the Company and each of its Subsidiaries is customary for Persons of similar size engaged in similar lines of business. The Company and each of its Subsidiaries is current in all of its premiums for its insurance policies. No termination of, or material premium increase with respect to, any such policies has been threatened in writing. Since the Balance Sheet Date, no Seller Party has received any written notice or other communication regarding any actual or (a) possible cancellation or invalidation of any such insurance policy, (b) refusal of any coverage or rejection of any material claim under any insurance policy or (c) material adjustment in the amount of the premiums payable with respect to any insurance policy. Neither the Company nor any of its Subsidiaries has any self-insurance or co-insurance programs. To the Knowledge of the Company, there exists no condition, situation or circumstance that, with or without notice or lapse of time, or both, would give rise to or serve as a basis for any claim under any policy listed in Schedule 3.19, except as set forth in such Schedule.

3.20 Intellectual Property.

(a) Schedule 3.20(a)(i) sets forth a complete and accurate list of all United States and foreign Company Registered Intellectual Property and material unregistered trademarks, trade names and fictitious names, and, with respect to Company Registered Intellectual Property, in each case enumerating specifically the applicable filing or registration number, title, jurisdiction in which filing was made or from which registration issued and date of filing or issuance, names of all current applicant(s) and registered owner(s), the current status of the application. The Company has identified to the Buyer all registration and applications for Company Registered Intellectual Property. To the Knowledge of the Company, all necessary registration, maintenance and renewal fees in connection with each item of Company Registered Intellectual Property have been paid and all necessary documents and certificates in connection with such Company Registered Intellectual Property have been filed with the relevant authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Company Registered Intellectual Property. Except as set forth on Schedule 3.20(a)(ii), there are no actions that must be taken by the Company or any of its Subsidiaries within one hundred eighty (180) days following the Closing Date for the purposes of obtaining, maintaining, perfecting, preserving or renewing any Company Registered Intellectual Property.

(b) Except as set forth on Schedule 3.20(b), the Company or its Subsidiary, as applicable, is the sole and exclusive owner of all Company Owned Intellectual Property (except the Company Licensed Intellectual Property), free and clear of any Encumbrances. To the Knowledge of the Company, the Company Intellectual Property constitutes all Intellectual Property necessary (i) to Exploit the products and services distributed, licensed or sold by the Company or any of its Subsidiaries in the manner so done currently by the Company or such Subsidiary, (ii) to Exploit the Internal Systems as they are currently used by the Company or its Subsidiaries and (iii) otherwise to conduct the business of the Company and its Subsidiaries in all material respects in the manner currently conducted.

(c) Neither the Company nor any of its Subsidiaries is a party to any Proceeding, nor is any Proceeding threatened in writing against the Company or any of its Subsidiaries, that involves a claim of infringement, unauthorized use or violation of any Company Owned Intellectual Property, or challenging the ownership, right to use, sell, distribute, license or sublicense, validity or enforceability of any Company Owned Intellectual Property. To the Knowledge of the Company, the operation of the business as it is currently conducted does not infringe or misappropriate any Intellectual Property rights of any Person or constitute unfair competition or trade practices under the Laws of any jurisdiction, and neither the Company nor any of its Subsidiaries has received written notice from any Person claiming that such operation infringes or misappropriates any Intellectual Property rights of any Person or constitutes unfair competitions or trade practices under the Laws of any jurisdiction. To the Knowledge of the Company, no third party is infringing upon or misappropriating, any Company Owned Intellectual Property or any Company Licensed Intellectual Property that is exclusively licensed to the Company or any of its Subsidiaries.

(d) The Company and each of its Subsidiaries has taken commercially reasonable security measures to protect its trade secrets used in and material to its business and otherwise safeguard and maintain the confidential and proprietary nature of all confidential information used by it in and material to the conduct of its business. To the Knowledge of the Company, the Company and each of its Subsidiaries has complied in all material respects with all applicable contractual and legal requirements pertaining to information privacy and security. No written complaint relating to an improper use or disclosure of, or a breach in the security of, any such information has been received by the Company or any of its Subsidiaries or threatened in writing against the Company or any of its Subsidiaries. To the Knowledge of the Company, there has been no material: (i) unauthorized disclosure of any third party proprietary or confidential information in the possession, custody or control of the Company or any of its Subsidiaries or (ii) breach of the Company's or any of its Subsidiaries'