

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT	
<b>CONVEYING PARTY DATA</b>		
	<b>Name</b>	<b>Execution Date</b>
	EIGENLIGHT CORPORATION	11/02/2015
<b>RECEIVING PARTY DATA</b>		
<b>Name:</b>	NEOPHOTONICS CORPORATION	
<b>Street Address:</b>	2911 ZANKER ROAD	
<b>City:</b>	SAN JOSE	
<b>State/Country:</b>	CALIFORNIA	
<b>Postal Code:</b>	95134	
<b>PROPERTY NUMBERS Total: 2</b>		
<b>Property Type</b>	<b>Number</b>	
<b>Patent Number:</b>	7116870	
<b>Patent Number:</b>	6535671	
<b>CORRESPONDENCE DATA</b>		
<b>Fax Number:</b>	(612)315-4321	
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>		
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<b>ATTORNEY DOCKET NUMBER:</b>	3275.000001	
<b>NAME OF SUBMITTER:</b>	PETER S DARDI	
<b>SIGNATURE:</b>	/Peter S. Dardi/	
<b>DATE SIGNED:</b>	04/09/2018	
<b>Total Attachments: 25</b>		
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## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (the “**Agreement**”) is made and entered as of November 2, 2015, by and between EigenLight Corporation, with its principal place of business at 30 Centre Road, Somersworth, NH 03878, a New Hampshire corporation (“**Seller**”), and NeoPhotonics Corporation, with its principal place of business at 2911 Zanker Road, California 955134, a Delaware corporation (“**Buyer**”).

### RECITALS

**WHEREAS**, Seller designs, develops, manufactures, markets and sells high-performance, cost-effective inline optical fiber taps, fiber optic test equipment and interconnect solutions (the “**Business**”);

**WHEREAS**, Seller desires to sell, and Buyer desires to acquire, the ELC Products (as defined below) and all other assets of the Business as set forth herein and in connection therewith Buyer will assume specific, limited liabilities of the Business on the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, the parties hereby agree as follows:

### SECTION 1. DEFINITIONS

1.1 “Assumed Liabilities” means a) the liabilities and obligations assumed by Buyer under the Sublease of even date with respect to the premises at 30 Centre Road, Somersworth, NH 03878 (“**Sublease**”) b) Seller’s liabilities and obligations under the Assumed Contracts (as defined below) and c) liabilities and obligations arising on or after the date hereof in connection with operation of the Business (as defined below) and/or ownership and use of the Transferred Assets (as defined below). Without limitation, Buyer does not assume any of Seller’s warranty obligations for products sold prior to the date hereof.

1.2 “ELC Product(s)” means all of Seller’s right, title and interest in and to all Seller’s products including, but not limited to, the current and in-design Series 100 and Series 200 optical tap monitor products, Series 500 power monitor products, interconnect cables reflective devices and related raw materials, obsolete Series 300 and Series 400 products, inventories, manufacturing/test equipment and technologies including, but not limited to, the Copyrights, Documentation, Equipment, Marks, Patent Rights, Technical Information, and Technology (as defined below).

1.3 “Business” means all of Seller’s right, title and interest in and to the design, manufacture, marketing and sale of high-performance, cost-effective inline optical fiber taps, fiber optic test equipment and interconnect solutions and related raw materials, inventories, manufacturing/test equipment and technologies, including ELC Products including, but not limited to the Copyrights, Documentation, Equipment, Marks, Patent Rights, Technical Information, and Technology.

1.4 “Copyrights” means copyrights, mask works, rights in works of authorship, or other similar intellectual property rights relating or applicable to the Documentation, ELC Products and other Business products.

1.5 “Documentation” means Technical Information, documentation and specifications useful in marketing, promoting, supporting, developing and selling the ELC Products and other Business products.

1.6 “Equipment” means engineering, lab, instrument grade cables and assemblies in all configurations, single mode, multimode and PM/polarization maintaining tap configurations, test, manufacturing or evaluation equipment and set-ups used in connection with the commercialization of the ELC Products and other Business products.

1.7 “Inventory Valuation Method” means cost (net of obsolete or slow moving Inventory) in accordance with Seller’s historical accounting method consistently applied.

1.8 “Inventory Value” means the book value of the Inventory on November 1, 2015 determined in accordance with the Inventory Valuation Method.

1.9 “Inventory” means Seller’s finished goods, raw materials, and work in progress, packaging, supplies and parts used in or purchased for the ELC Products and Business.

1.10 “Liabilities” means debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, known or unknown, including those arising under any law, action, or governmental order and those arising under any contract.

1.11 “Marks” means all Seller’s trademarks, trademark applications, trade dress, logos, insignia, symbols, designs or other marks identifying the ELC Products and other Business Products including the name EigenLight.

1.12 “Patent Rights” means (i) any and all worldwide rights of Seller arising under contract, status or common law, whether or not perfected, associated with or under all patents and patent applications listed on Exhibit A; and (ii) all divisions, continuations, renewals, reissuances, reexaminations, applications and registrations, and extensions of the foregoing now existing or hereinafter filed, issued or acquired.

1.13 “Patent Rights Assignment” means a mutually agreeable assignment of the Patents Rights by Seller to Buyer.

1.14 “Poole Consulting Agreement” means a mutually acceptable agreement between Buyer and Janice Poole pursuant to she agrees to provide consulting services to Buyer until March 31, 2016 in return for payments at the rate of \$200,000 per year.

1.15 “Poole Patent Assignment” means a mutually acceptable agreement between Buyer and the Craig D Poole Revocable Trust pursuant to which such Trust assigns to Buyer certain patents owned by it in return for running royalty payments.

1.16 **“Technical Information”** means any and all technical, ELC Product, manufacturing, or engineering information relating to the origin, concept, development, design, process, use, assembly, test, support, or operation of the ELC Products and other Business products including information related to hardware, inventory, supporting materials and technology, tooling, software programs (test, evaluation, and application), processes, designs, schematics, net lists, data sheets, specifications, intellectual property, know-how and marketing and sales materials. “Technical Information” comprises both confidential information and non-confidential information.

1.17 **“Technology”** means Seller’s proprietary technology used to design, develop and/or manufacture the ELC Products and other Business products, including ELC Product and other Business product designs, circuitry and circuit block libraries and techniques, device layouts, cell design, electrical characteristics, boards, and other information related to the processes, methods, techniques, ideas, know how, research and development, creations improvements, devices, design, algorithms, and apparatus, as applicable, and other writings, and other tangible embodiments of any of the foregoing, in any form whether or not specifically listed herein.

## **SECTION 2. SALE OF ASSETS AND ASSUMPTION OF LIABILITIES**

2.1 **Purchase.** Upon the terms and subject to the conditions of this Agreement and in reliance upon the representations, warranties and covenants of the parties, Seller hereby sells, conveys, assigns, transfers and delivers, free and clear of any and all Encumbrances (as defined below) to Buyer, and Buyer hereby purchases, acquires and accepts from Seller, all of Seller’s rights, title and interests in, under and to the ELC Products (as defined in Section 1.1) and Business (as defined in Section 1.2) including the Copyrights, Documentation, Equipment, Marks, Patent Rights, Technical Information, and Technology (collectively referred to as the **“Transferred Assets”**). For purposes of this Agreement, “Transferred Assets” do not include the Excluded Assets (as defined in Section 2.2 hereof) and do include all of Seller’s rights, title and interests in the assets, rights and properties of every kind and nature, whether tangible or intangible, wherever located and whether now existing or hereafter acquired used or held for use by Seller in its Business with respect to the Transferred Assets, it being understood that the Transferred Assets include, without limitation, the following:

(a) **Assumed Contracts.** All Seller’s rights to the extent assignable, under specific contracts, purchase and sales orders and commitments and other agreements set forth on Exhibit B hereto related to the Business that are hereby assigned to and assumed by Buyer (the **“Assumed Contracts”**);

(b) **“Inventory”**. The inventory, finished good, raw materials, work in progress, packaging, supplies and parts used in the Transferred Assets (“Inventory”), an estimated list of which as of November 1, 2015 has been prepared by Seller and circulated among the parties.;

(c) **Personal Property.** All Equipment and tangible personal property related to the commercialization of ELC Products (the **“Personal Property”**);

(d) **Intellectual Property.** The software, whether in source code or object code format, Patents, patent applications, inventions, Marks, Copyrights and licenses owned by Seller that are related to or embodied in the ELC Products (the "**Intellectual Property**");

(e) **Records.** Originals or copies of Seller's records relating exclusively to the Transferred Assets, including sales data, customer lists, information relating to customers, supplier lists, mailing lists, brochures and advertising materials (the "**Records**"); and

(f) **Other Patent Rights.** Seller's rights if any in the patents identified on Exhibit A as "Abandoned" as to which Seller makes no representations or warranties.

Unless specifically stated herein, Buyer shall not assume any Liabilities of the Seller, whether related to the ELC Products, the Business or otherwise.

2.2 **Excluded Assets.** Notwithstanding anything to the contrary in Section 2.1, the following assets, rights and properties of Seller are specifically excluded from the Transferred Assets and shall be retained by Seller (the "**Excluded Assets**").:

(a) **Refund Claims.** Rights to or claims for losses, loss carryforwards, refunds of taxes and other governmental charges for periods ending on or prior to the Closing Date and the benefit of any tax credits of Seller;

(b) **Certain Third Party Claims.** Rights of indemnification, contribution, reimbursement or other claims of Seller against third parties (including, without limitation, insurance carriers and parties to any of the Assumed Contracts) in respect of liabilities or obligations retained by Seller;

(c) **Nontransferable Permits; Corporate Assets.** The nontransferable Permits and assets relating to Seller's corporate functions (including, but not limited to, the corporate charter, taxpayer and other identification numbers, income tax records, seals, minute books and stock transfer books); and

(d) **Accounts Receivable.** All accounts receivable of Seller ("Accounts Receivable").

(e) **Cash and Cash Equivalents.** Cash and cash equivalents (such as demand or time deposit accounts, certificates of deposit and U.S. government obligations);

(f) **Personal Items.** The laptop, cell phone and similar personal items used by Janice Poole provided that all Seller's information contained in the laptop is backed up in the Seller's servers;

(g) **Other Excluded Assets.** Except as provided in the Sublease, all interests, responsibilities and obligations arising out of or in connection with the real property lease for Seller's Business or any other Business agreement or obligation that is not an Assumed Contract.

2.3 **Assumption of Liabilities.**

(a) **Assumed Liabilities.** Buyers hereby assumes only the Assumed Liabilities and Buyer agrees to timely pay, perform and discharge the Assumed Liabilities in accordance with their terms.

(b) **Excluded Liabilities.** Except for the Assumed Liabilities, Seller acknowledges that Buyer is not purchasing, assuming or becoming responsible for any direct or indirect, liability, indebtedness, obligation, commitment, expense, claim, deficiency, guaranty or endorsement of any type whatsoever, whether accrued or unaccrued, absolute or contingent, matured or unmatured, liquidated or unliquidated, known or unknown, asserted or unasserted, due or to become due, (including, without limitation, liabilities of Seller for federal, state, or local income, franchise, property, sales or use or recapture taxes, assessments, employee termination and bonuses payments for the period prior to the Closing and penalties, whether arising out of the transactions contemplated by this Agreement or otherwise or liabilities under any benefit arrangement, multiemployer plan, pension plan or welfare plan) of Seller.

2.4 **Title Conveyance.** This agreement serves as a bill of sale and assumption agreement. Notwithstanding the foregoing, there shall be no transfer or assignment of any particular Transferred Asset if such transfer or assignment or attempt to make such a transfer or assignment without authorization, approval, consent or waiver of a third party would constitute a breach or violation thereof or otherwise adversely affect the rights of Buyer thereto, and any such transfer or assignment shall be made only when the appropriate approval is obtained.

### **SECTION 3. PURCHASE PRICE**

3.1 **Purchase Price.** The purchase price for the Transferred Assets is equal to the Inventory Value plus all prepaid expenses for periods on and after the date hereof, such as rent, plus the book value of the non-Inventory Transferred Assets as set forth in Seller's books and records on the date hereof ("**Purchase Price**"). Buyer herewith pays Four Hundred Twenty-one Thousand Six Hundred Seventy One Dollars and Ninety-Two cents (\$421,671.92) to Seller in payment of the Purchase Price ("**Closing Payment**").

3.2 **Post-Closing Adjustment.** Buyer and Seller together shall, within thirty (30) days hereof, prepare a statement setting forth a final calculation of the Inventory Value as of the date hereof ("**Final Inventory Value**"). If the Final Inventory Value exceeds the Inventory Value used to calculate the Closing Payment, Buyer shall forthwith pay the difference to Seller. If the Final Inventory Value is less than the Inventory Value used to calculate the Closing Payment, Seller shall forthwith pay the difference to Buyer. If the parties are unable to agree on the Final Inventory Value, the matter shall be decided by an independent accountant acceptable to both parties whose decision shall be final, binding and unappealable.

### **SECTION 4. CLOSING**

4.1 **Closing.** The closing (the "**Closing**") of the transactions contemplated by this Agreement is occurring simultaneously with the signing hereof (the "**Closing Date**"). All transactions provided herein to occur on and as of the Closing Date shall be deemed to have occurred simultaneously and to be effective as soon as the parties have completed the Closing or as of the close of business on the Closing Date, whichever first occurs.

4.2 **Deliveries of Seller.** Seller herewith delivers to Buyer, receipt of which is acknowledged by Buyer:

- (a) a duly executed copy of the Sublease;
- (b) written consents and assignments from each of the parties listed on Exhibit C;
- (c) such other documents and instruments that Buyer reasonably requests in furtherance the transactions described herein;
- (d) A duly executed copy of the Patent Rights Assignment;
- (e) duly executed copies of the Poole Patent Assignment and the Poole Consulting Agreement; and
- (f) A duly executed consent of John J. Flatley Company to the Sublease in form acceptable to Buyer.

4.3 **Deliveries of Buyer.** Buyer herewith delivers to Seller:

- (a) the Closing Payment;
- (b) a duly executed copy of the Sublease;
- (c) duly executed copies of the Poole Patent Assignment and the Poole Consulting Agreement; and
- (d) such other documents and instruments that Seller reasonably requests in furtherance the transactions described herein.

## **SECTION 5. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer that, as except as set forth in Exhibit E hereto, as follows:

5.1 **Organization, Standing and Authority.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New Hampshire. Seller has all necessary corporate power and corporate authority to enter into this Agreement and to perform its obligations hereunder. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, arrangement or other similar laws or equitable principles relating to or limiting creditor's rights generally.

5.2 **Authorization.** All requisite corporate action necessary to authorize the execution, delivery and performance by Seller of this Agreement have been taken. This Agreement constitutes valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, except as may be limited by bankruptcy, insolvency,



reorganization, moratorium, arrangement or other similar laws or equitable principles relating to or limiting creditors' rights generally.

5.3 **No Breach.** The execution and delivery of this Agreement by Seller does not and the consummation of the transactions contemplated hereby by Seller will not (a) violate any provision of Seller's Certificate of Incorporation or Bylaws, (b) result in a material breach (or any event which, with notice or lapse of time or both, would constitute a material breach) of any term or provision of, or constitute a material default under, any material agreement or arrangement to which Seller is a party and by which the Transferred Assets are bound, (c) result in the creation of any material lien, charge or encumbrance on the Transferred Assets or (d) violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority to which Seller is bound.

5.4 **Title to Transferred Assets.** Seller is the exclusive owner of all right, title and interest in and to the Transferred Assets free and clear of all mortgages, pledges, charges, liens, claims and encumbrances of any kind, nature or description (collectively, "**Encumbrances**"). Seller has full right and power to transfer the Transferred Assets to Buyer pursuant to this Agreement free and clear of all Encumbrances, and at the Closing all Transferred Assets will be so transferred to Buyer. The execution and delivery of this Agreement by Seller and the performance of this Agreement and any related or contemplated transactions by Seller will not require filing or registration with, or the issuance of any license, permit or order by, or the consent of, any other third party or governmental entity. Except for contracts if any not assumed by Buyer hereunder, the Transferred Assets constitute all of the assets and Intellectual Property necessary for Buyer to design, manufacture, market and sell the ELC Products consistent with the manner such activities were conducted by Seller during the six (6) months immediately prior to Closing.

5.5 **Intellectual Property.**

(a) **Exhibit D** lists (i) all licenses (both in-bound and out-bound) as to which Seller is a party and pursuant to which any Person is authorized to use any Intellectual Property; (ii) all licenses as to which Seller is a party and pursuant to which Seller is authorized to use any third party patents which are incorporated into any of the ELC Products or other Business products, except for licenses that are available to, and used by, businesses generally; and (iii) all currently operative consulting agreements to which Seller is a party under which any third party, working alone or with others, created, developed or otherwise contributed work to the Intellectual Property, ELC Products or other Business products.

(b) To the knowledge of Seller, Seller possesses all rights necessary to use, sell, license, assign, transfer, convey, dispose of or otherwise commonly exploit the Intellectual Property relating to the use, design, sale and marketing of the ELC Products or other Business products as currently conducted.

(c) Seller has not received notice from any third party that any ELC Product or other Business product infringes or misappropriates the Intellectual Property of any third party, violates any right of any third party (including any right to privacy or publicity), or constitutes unfair competition or trade practices under the laws of any jurisdiction.

(d) To the knowledge of Seller, there is no unauthorized use, disclosure, infringement or misappropriation of any Intellectual Property by any third party.

(e) To the knowledge of Seller, Seller is not in breach of any license or other agreement relating to the Intellectual Property.

(f) Seller has not been sued in any action, suit or proceeding or received any written notice with respect to any Intellectual Property.

(g) Seller has not brought any action, suit or proceeding for infringement of Intellectual Property or breach of any license or agreement involving Intellectual Property against any third party.

(h) To its knowledge, Seller has secured valid written assignments from any and all employees, contractors and consultants who contributed to the creation or development of Intellectual Property of the rights to such contributions that Seller does not already own by operation of law.

(i) Seller has taken reasonable steps to protect and preserve the confidentiality of all Intellectual Property not otherwise protected by patents, patent applications or copyright.

**5.6 Warranties.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN THIS SECTION 5, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE BUSINESS, TRANSFERRED ASSETS AND ASSUMED LIABILITIES, IT BEING SPECIFICALLY UNDERSTOOD BY BUYER THAT, EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, THE ELC PRODUCTS ARE BEING SOLD AND TRANSFERRED "AS IS" IN ALL RESPECTS, SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF BUYER'S WHETHER OR NOT SELLER HAS BEEN MADE AWARE OF ANY SUCH PURPOSE.

**5.7 Taxes.** Seller has filed all tax returns of every kind (including returns of real and personal property taxes, sales, use and excise taxes, intangible taxes, withholding taxes, and FICA and unemployment compensation taxes) relating to the Business that are required by law to have been filed and all taxes shown to be due on such returns have been paid in full.

**5.8 Hazardous Waste.** Seller uses acetone, isopropyl alcohol, ink, florescent lights and assorted batteries ("Hazardous Materials") in its operations, and has segregated all Hazardous Materials and waste (other than that which is currently supporting operations) and will have them removed from the Premises at the earliest available pick-up date. .

## **SECTION 6. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as follows:

6.1 **Organization, Standing and Authority.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has all necessary corporate power and corporate authority to enter into this Agreement and to perform its obligations hereunder. When executed and delivered by Buyer, this Agreement will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, arrangement or other similar laws or equitable principles relating to or limiting creditors' rights generally.

6.2 **Authorization.** All requisite corporate action necessary to authorize the execution, delivery and performance by Buyer of this Agreement has been taken. This Agreement constitutes valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, arrangement or other similar laws or equitable principles relating to or limiting creditors' rights generally.

6.3 **No Breach.** The execution and delivery of this Agreement by Buyer does not and the consummation of the transactions contemplated hereby by Buyer will not (a) violate any provision of Buyer's Certificate of Incorporation or Bylaws, (b) result in a material breach (or any event which, with notice or lapse of time or both, would constitute a material breach) of any term or provision of, or constitute a material default under, any material agreement or arrangement to which Buyer is a party, or (c) violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority to which Buyer is bound or affected.

## SECTION 7. POST-CLOSING COVENANTS

7.1 **Consents, Assignments and Novations.** Buyer and Seller shall use good faith efforts to obtain, as soon as practicable, all requisite consents to transfers, assignments and novations, as the case may be, of all of the Transferred Assets. Neither party shall be required to grant any consideration to any third party in order to obtain any such consent, assignment, novation, assumption or release. Seller shall assist Buyer in transferring and obtaining any permits and licenses that it may need to operate the Business.

7.2 **Further Action.** Each party shall take such other actions as the other party may reasonably request to consummate or implement the transactions contemplated hereby or to evidence such events or matters. If, at any time before or after the Closing Date, Buyer reasonably believes or is advised that any further instruments, deeds, assignments or assurances are reasonably necessary or desirable to consummate the transactions contemplated by this Agreement or to carry out the purposes and intent of this Agreement at or after the Closing Date, then Seller and Buyer, and their respective officers and directors, shall execute and deliver all such proper deeds, assignments, instruments and assurances and do all other things reasonably necessary to do so.

7.3 **No Brokers.** Seller and Buyer each represent and warrant to the other that neither it nor any of its affiliates has dealt with any broker or finder in this transaction, and each agrees to indemnify the other against any loss, cost or expense, including reasonable attorneys'

fees, incurred as a result of any claim for a fee or commission asserted by any broker or finder, with respect to this Agreement or the consummation of the transactions provided for in this Agreement whose claim arises through the indemnifying party or any of its affiliates.

7.4 **Accounts Receivable.** Seller acknowledges that Buyer will inform existing Seller customers of new payment remit-to address for future payments on account. Any amounts received by Buyer relating to Accounts Receivable existing as of the Closing Date will be remitted to Seller within fifteen (15) days of receipt. Any amounts received by Seller relating to customer billings after the Closing Date (other than those paying down the Accounts Receivable) will be retained by or remitted to the Buyer by Seller within fifteen (15) days of receipt.

7.5 **Publicity.** The proposed transaction is subject to and confidential under the Non-Disclosure and Confidentiality Agreement dated March 21, 2014 between Seller and Buyer (the "**Confidentiality Agreement**"). All public announcements relating to this Agreement or the transactions contemplated hereby shall be made only after consultation between the parties. Any disclosures to customers in connection with commercial relationships shall not reveal the Purchase Price of this Agreement. Notwithstanding the foregoing, either party shall have the right, in its sole discretion, to make such disclosures as it may deem necessary or advisable to its legal representative or to comply with required regulatory disclosures. In the event of a breach or anticipatory breach of this Section 7.4 by either party, the other party shall be entitled, in addition to any and all other remedies available at law or in equity, to preliminary and permanent injunctive relief and specific performance without proving damages.

7.6 **Warranty Obligations.** Buyer shall not assume Seller's warranty obligations with respect to products sold by Seller prior to the date hereof but Buyer shall sell to Seller at Buyer's cost such products as Seller may reasonably request in order for Seller to honor such warranty obligations.

7.7 **Operating Expenses.** Each party shall pay its share (based on the Closing date) of any invoice or charge for operating expenses invoices that covers periods before and after the closing including without limitation any expenses pre-paid by Seller that are not included in the Purchase Price.

7.8 **Name.** As soon as practical following the closing, Seller shall change its name to remove "EigenLight". Nevertheless Seller retains the right to use the name EigenLight in connection with its wind down activities including the collection of Accounts Receivable.

## **SECTION 8. REASONABLE EFFORTS; FURTHER ASSURANCES**

Each of Buyer and Seller shall use its commercially reasonable efforts to effectuate the transactions contemplated hereby and to fulfill and cause to be fulfilled the conditions to Closing under this Agreement. Each party shall execute and deliver both before and after the Closing such further certificates, agreements and other documents and take such other actions as the other party may reasonably request to consummate or implement the transactions contemplated hereby or to evidence such events or matters. Each party shall comply with all applicable laws in

carrying out its obligations hereunder and conducting its operations after the day hereof

## **SECTION 9. TAXES**

9.1 **Transfer Taxes.** All sales, transfer, excise, license, intangible and similar taxes and fees (including all recording fees, if any) incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by Seller and Seller shall file all necessary documentation and pay all amounts due with respect to such taxes. Seller acknowledges that Buyer shall have no responsibility for taxes assessed or based upon any gain or income to Seller resulting from the transactions contemplated hereunder or arising or resulting from the conduct of the Seller's business prior to the Closing Date.

9.2 **Allocation of Purchase Price.** The Purchase Price shall be allocated to the Transferred Assets and Assumed Liabilities in accordance with Exhibit F. Each of the parties hereto agrees: (i) that such allocation shall be consistent with the requirements of Section 1060 of the Code and the regulations thereunder; (ii) to complete jointly and to file separately Form 8594 with its Federal income tax return for the appropriate period consistent with such allocation for the tax year in which the Closing Date occurs; and (iii) that neither of the parties hereto shall take a position on any income, transfer or gains tax return, before any governmental authority charged with the collection of any such tax or in any judicial proceeding that is in any manner inconsistent with the terms of any such allocation without the consent of the other party.

## **SECTION 10. INDEMNIFICATION**

10.1 **Indemnities by Seller.** Seller will be liable for and hereby agrees to indemnify and defend Buyer from and against any and all losses, liabilities, damages, demands, claims, actions, judgments or causes of action, assessments, costs and expenses (including, without limitation, interest, penalties and reasonable attorneys' fees) (collectively, "Losses") incurred or sustained by Buyer as a result of (a) Seller's failure to discharge any Excluded Liability, (b) any inaccuracy or breach of any representation, warranty, covenant or agreement of Seller contained herein or (c) third party claims with respect to the operation of the Business by Seller prior to the Closing. Notwithstanding the foregoing, Seller shall not be liable to Buyer for any indirect, incidental, special, consequential damages, including, but not limited to, loss of revenue or income, cost of capital, or loss of business, goodwill, reputation or opportunity except to the extent asserted against Buyer by third parties.

10.2 **Indemnities by Buyer.** Buyer will be liable for and hereby agrees to indemnify and defend Seller from and against any and all Losses incurred or sustained by Seller as a result of (a) any Assumed Liability, (b) any inaccuracy or breach of any representation, warranty, covenant or agreement of Buyer contained herein including Buyer's failure to discharge the Assumed Liabilities or (c) the operation of the Business after the Closing. Notwithstanding the foregoing, Buyer shall not be liable to Seller for any indirect, incidental, special, consequential damages, including, but not limited to, loss of revenue or income, cost of capital, or loss of business, goodwill, reputation or opportunity except to the extent asserted against Seller by third parties.

10.3 **Limitations.** Except for Losses based on actual (rather than constructive) fraud or resulting from breach of one or more post-closing obligations hereunder, neither party's aggregate liability (for indemnification or otherwise) arising out of this Agreement shall exceed an amount equal to the **Purchase Price**. The indemnification provided for in Section 10 shall be subject to the following limitations:

(a) The indemnifying party shall not be liable to the indemnified party for indemnification with respect to Losses for breach of representations and warranties until the aggregate amount of all such party's Losses therefrom exceeds \$5,000.00 (the "Deductible"), in which event the indemnifying party shall only be required to pay or be liable for Losses therefrom in excess of the Deductible. The Deductible shall not apply to breach of post-closing covenants.

(b) Payments by an Indemnifying Party in respect of any Damages shall be reduced by the amount of any insurance proceeds actually received by the indemnified party with respect to the indemnified claim and the Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies.

(c) Each Party agrees to use commercially reasonable efforts to the extent required by Applicable Laws to mitigate any Damages which form the basis of a claim for indemnification hereunder.

10.4 **Notice and Defense.** Promptly upon receipt by either Seller or Buyer of notice of the assertion of any claim in respect to which indemnity may be sought against the other party (the "**Indemnifying Party**") pursuant to this Section 10 that party (the "**Indemnified Party**") shall notify the Indemnifying Party in writing and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party, and the payment of all expenses. The failure of any Indemnified Party to give timely notice hereunder shall not affect rights to indemnification hereunder, except and only to the extent that, the Indemnifying Party demonstrates actual material damage caused by such failure, and then only to the extent thereof.

10.5 **Satisfaction of Claims.** In the event a party makes a claim for indemnification, such claim shall be made in accordance with the provisions of this Section and shall be specified in a written notice (the "**Satisfaction Notice**") to the other prior to the **one year** anniversary of the Closing Date. In case the other objects in writing to any claim or claims made in any Satisfaction Notice within thirty (30) days of receipt of the Satisfaction Notice, Buyer and Seller shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. If Buyer and Seller should so agree, such agreement shall be set forth in writing and signed by both parties. If no such agreement can be reached after good faith negotiation, Buyer and Seller may pursue all remedies available to them under the provision of this Agreement, at law or in equity to resolve the validity or amount of the disputed claim.

10.6 **Exclusive Remedy.** Except for Losses based on actual (rather than constructive) fraud and/or breach of post-closing covenants, the provisions of this Section 10 shall constitute the exclusive remedy for any and all Losses (whether such Losses are based on contract, tort or otherwise) asserted against, resulting from, imposed upon or incurred or suffered by the parties

to this Agreement as a result of, or based upon or arising from the transactions contemplated by this Agreement.

## **SECTION 11. GENERAL MATTERS**

11.1 **Survival of Representations and Warranties.** The representations and warranties of the Parties in this Agreement shall survive for a period of one (1) year following the Closing.

11.2 **Costs.** Regardless of whether the transactions contemplated by this Agreement are consummated, Buyer and Seller shall each pay its own respective legal, accounting, advisory and other fees, costs and other out-of-pocket expenses incurred in connection with the negotiation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby and will not look to the other party for any contribution toward such expenses.

11.3 **Investigation.** No information or knowledge obtained by Buyer pursuant to this Agreement or otherwise, whether conducted prior to or after the date hereof, shall affect or be deemed to modify any representation or warranty of Seller contained herein or the right of Buyer to rely thereon or the conditions to the obligations of Buyer to effect the Closing; provided, however, that to the extent Buyer is aware of any breach of any representation or warranty of Seller, Buyer shall promptly notify Seller.

11.4 **Entire Agreement.** This Agreement and Exhibits constitute the entire agreement and understanding of the parties and supersede any prior oral or written agreement, understanding, representation, warranty, promise or document relating to the subject matter of this Agreement.

11.5 **Modification.** This Agreement may be amended or modified only by a written instrument executed by the parties hereto.

11.6 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any party may execute this Agreement by facsimile signature, and the other parties will be entitled to rely on such facsimile signature as conclusive evidence that this Agreement has been duly executed by such party.

11.7 **Section Headings.** The section and other headings contained in this Agreement and in the Exhibits hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or the Exhibits.

11.8 **Waiver.** No omission or delay by any party in exercising any right, power or privilege hereunder shall impair the exercise of any such right, power or privilege or be construed to be a waiver hereof or of any default or to be an acquiescence therein, and any single or partial exercise of any such right, power or privilege shall not preclude other or further exercises thereof or the exercise of any other right, power or privilege. No waiver shall be valid unless in writing and signed by the party to be charged, and then only to the extent therein specified.

11.9 **Severability.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability and shall not render invalid or unenforceable the remaining terms and provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

11.10 **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with laws of the State of Delaware without reference to the conflicts of law principles thereof.

11.11 **Non-Assignability.** This Agreement is not assignable by either party hereto without the prior written consent of the other party, which shall not be unreasonably delayed or withheld. Notwithstanding the foregoing a successor in interest to a party by merger, by operation of law, or by assignment, purchase, or otherwise, of substantially all the assets or business of either party shall acquire all the rights and be subject to all the obligations of such party hereunder, without the necessity of obtaining such prior written consent.

11.12 **Parties in Interest.** All of the terms and provisions of this Agreement shall be binding upon and inure solely to the benefit of the parties hereto and any permitted successors and assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

11.13 **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given, (i) if delivered in person, (ii) if mailed by certified or registered mail, postage prepaid, or (iii) if transmitted by facsimile, provided that any notice so given is also mailed as provided in clause (ii) above, as follows:

If to Seller: EigenLight Corporation  
13B Water Street  
Newmarket, NH 03857  
Attention: Janice W. Poole

If to Buyer: NeoPhotonics Corporation  
2911 Zanker Road, San Jose, CA 95134  
Telephone: (408) 232-9200  
Fax: (408) 321-5018

Attention: Legal Department

or to such other address as the party to be notified shall have furnished to the other party in writing. Any notice given in accordance with the foregoing shall be deemed to have been given, (i) when delivered in person, or by courier or a nationally recognized overnight delivery service, (ii) when transmitted by facsimile as provided for above, or (iii) three business days following the date on which it shall have been mailed.



11.14 **Attorney's Fees.** If any party to this Agreement brings an action to enforce its rights under this Agreement in accordance with the provisions hereof, the prevailing party shall be entitled to recover its actual out-of-pocket costs and expenses, including without limitation attorneys' fees and court costs reasonably incurred in connection with such action, including any appeal of such action.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

**SELLER:**

**EIGENLIGHT CORPORATION,**  
a New Hampshire corporation

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

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

**BUYER:**

**NEOPHOTONICS CORPORATION,**  
a Delaware corporation

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

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

11.14 Attorney's Fees. If any party to this Agreement brings an action to enforce its rights under this Agreement in accordance with the provisions hereof, the prevailing party shall be entitled to recover its actual out-of-pocket costs and expenses, including without limitation attorneys' fees and court costs reasonably incurred in connection with such action, including any appeal of such action.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SELLER:

BUYER:

EIGENLIGHT CORPORATION,  
a New Hampshire corporation

NEOPHOTONICS CORPORATION,  
a Delaware corporation

By: James C. Paul

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

Title: President

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

**Exhibit A**  
**Patent Rights**

Type	Owner	Patent No.	Date Issued	Patent Title
Patent (Inactive)	EigenLight	6,535,671	3/18/2003	Optical Fiber Tap with Integral Reflecting Surface and Method of Making Same
Patent	EigenLight	7,117,870	10/3/2006	Broadband Fiber Optic Tap
Application	EigenLight	13/026,388	Application 2/14/2011	Hermetic Package with Leaded Feedthroughs for In-Line Optic Devices and Method of Making

<b>ABANDONED PATENT RIGHTS</b> Optical Power Meter With Low-Power Measurement Circuit Assignee: Craig D. Poole			
US5708265	US 08/777,580	12/31/96	X
US5591964	US 08/438,843	05/11/95	X
WO1996035931	WO1996US5961A	04/30/96	
JP10503286	JP1996534109A	04/30/96	
EP770203	EP1996915391A	04/30/96	
DE69622494	DE69622494A	04/30/96	
CA2194689	CA2194689A	04/30/96	
AU699809	AU199657180A	04/30/96	
Optical Fiber Tap With Integral Reflecting Surface and Method of Making Same Assignee: EigenLight Corporation			
US6535671	US 09/794,876	02/27/01	X
US Provisional	US 60/185,799.	02/29/00	
WO2004083917	WO2004US6579A	03/04/04	
EP1606659	EP2004717411A	03/04/04	
CA2519377	CA2519377A	03/04/04	
Broadband Fiber Optic Tap Assignee: EigenLight Corporation			
US7116870	US 11/216,502	08/31/05	X
US Provisional	US 60/606,002	08/31/04	
WO2006026618	WO2005US30844A	08/31/05	

JP04801072	JP2007530271A	08/31/05	
EP1792216	EP2005792332A	08/31/05	
CN100480755	CN200580029190A	08/31/05	
CA2576969	CA2576969A	08/31/05	
Hermetic Package With Leaded Feedthroughs for In-Line Fiber Optic Devices and Method of Making Assignee: EigenLight Corporation			
US20140029891	US 13/924,890	06/24/13	
US20110200288	US 13/026,388	02/14/11	X
US Provisional	US 61/337,934	02/12/10	
WO2011100068	WO2011US263A	02/14/11	
JP2013519917	JP2012552877A	02/14/11	
CN102884459	CN201180015705A	02/14/11	
CA2789672	CA2789672A	02/14/11	

**Exhibit B**  
**Assumed Contracts**

Buyer assumes liability for obligations arising on and after November 2, 2015 under the following agreements:

- Unitil (Gas)
- Eversource (Electric)
- Verizon Wireless (Cell Phone Kathleen Stewart and Janice Poole)
- Comcast (Phone and Internet)
- UPS (Daily pickup)
- Ready Refresh (Poland Spring water)
- Catherine Davis (Cleaning service)
- Pitney Bowes (Postage meter)
- Github (Software source code control)
- Vital Design (Website)
- Corrius Networks (IT Consulting)

Open Vendor POs (Total \$6101.30):

- 11548: FM Callahan \$1187.50 (Electroplating service inventory)
- 11549 FM Callahan \$1134.00 (Electroplating service inventory)
- 11547 Lansing Instruments \$959.80 (Inventory Enclosures for array boxes)
- 11550 Nanostructures \$2080.00 (Inventory Silicon tops for SR100A)
- 11551 Seikoh-Giken \$740.00 (Inventory Fiberoptic connectors)

Accounts Payable (Total \$2832.51):

- 718382 Fiber Instrument Sales \$115.00 (Kimwipes)
- 719301 Fiber Instrument Sales \$28.95 (QBE Wipes)
- 0248939-IN Fiber Optic Center \$878.50 (Polishing Film)
- 0249123-IN Fiber Optic Center \$28.50 (Polishing Film)
- 331478 Index Packaging \$990.00 (Foam Discs for Packaging)
- 05J043587848 ReadyRefresh \$106.29 (Poland Spring Water)
- 3280609850 Staples Advantage \$51.86 (Toilet tissue)
- 71489374 Uline \$445.45 (Trash bags)
- I29166558 W.B.Mason \$187.96 (Copy paper)

# Customer Orders

Job No	Customer Name	Creation Date	Total	Invoiced	Non-Invoiced
RMA1880	Sanmina-SCI Corporation	11/04/14	\$ 120.00		\$ 120.00
RMA1893	SCI Brockville Corporation	12/03/14	\$ 459.56		\$ 459.56
RMA1893	SCI Brockville Corporation	12/03/14	\$ 946.00		\$ 946.00
RMA1893	SCI Brockville Corporation	12/03/14	\$ 1,558.00		\$ 1,558.00
RMA2035	SCI Brockville Corporation	09/15/15	\$ 75.50		\$ 75.50
RMA2035	SCI Brockville Corporation	09/15/15	\$ 72.00		\$ 72.00
RMA2035	SCI Brockville Corporation	09/15/15	\$ 288.00		\$ 288.00
RMA2037	Northrop Grumman	09/17/15	\$ 750.00		\$ 750.00
SO19307	Absys	02/27/15	\$ 727.00		\$ 727.00
SO19695	AP Sensing GmbH	05/07/15	\$ 3,330.84	\$1,752.78	\$ 1,578.06
SO19960	Picometrix, LLC	07/09/15	\$ 917.30		\$ 917.30
SO19966	Picometrix, LLC	07/09/15	\$ 1,439.35		\$ 1,439.35
SO20145	Picometrix, LLC	08/12/15	\$ 1,751.25		\$ 1,751.25
SO20154	Sparton	08/13/15	\$ 3,268.00		\$ 3,268.00
SO20156	Sparton	08/13/15	\$ 2,451.00		\$ 2,451.00
SO20158	Sparton	08/13/15	\$ 2,451.00		\$ 2,451.00
SO20269	Intelligent Visibility	08/28/15	\$ 338.10		\$ 338.10
SO20447	Picometrix, LLC	10/07/15	\$ 2,201.52		\$ 2,201.52
SO20467	Picometrix, LLC	10/13/15	\$ 2,015.09		\$ 2,015.09
SO20468	Picometrix, LLC	10/13/15	\$ 2,878.70		\$ 2,878.70
SO20469	Picometrix, LLC	10/13/15	\$ 2,878.70		\$ 2,878.70
SO20470	Picometrix, LLC	10/13/15	\$ 2,302.96		\$ 2,302.96
SO20485	TE Subcom	10/15/15	\$ 2,800.50		\$ 2,800.50
SO20501	FutureWei Technologies	10/20/15	\$ 995.00		\$ 995.00
SO20502	FutureWei Technologies	10/20/15	\$ 573.00		\$ 573.00
SO20509	TE Subcom	10/21/15	\$ 4,211.60		\$ 4,211.60
SO20518	Picometrix, LLC	10/23/15	\$ 1,284.22		\$ 1,284.22
SO20520	Picometrix, LLC	10/23/15	\$ 1,100.76		\$ 1,100.76
SO20528	Laser 2000	10/27/15	\$ 7,380.00		\$ 7,380.00
SO20534	EFFECT Photonics B.V.	10/28/15	\$ 490.00		\$ 490.00
SO20538	Laser Components GmbH	10/30/15	\$ 2,060.90		\$ 2,060.90
SO20541	YU-YI Enterprise Co., Ltd	10/30/15	\$ 490.00		\$ 490.00
SO20542	Laser Components GmbH	10/30/15	\$ 1,324.30		\$ 1,324.30
			\$55,930.15	\$1,752.78	\$ 54,177.37

Customer Deposits: Total \$2305.83

Absys 2/27/2015 \$737 Double Payment. Amount credited to a future order.

NP Photonics 5/28/2015	\$533.13	Double Payment. Amount credited to a future order.
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QuantaCorp 10/22/2015	\$1035.70	Prepayment on SO2
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**Exhibit C**  
**Consents**

Landlord consent to Sublease

Transfer of Environmental Permits may be required:

- Hazardous Waste Small Quantity Generator Self Certification and Declaration Compliance Form
- RCRA C Site Identification Form
- Hazardous Material Small Quantity Generator Checklist



**Exhibit D**  
**Licenses and Consulting Agreements**

- **Patent license between Trust and Company**
- **Software:**
  - Pro Engineer
  - DBA Accounting and MRP System
  - Trend Micro Antivirus Software

**Exhibit E**  
**Exceptions to Seller's Representations and Warranties**

- Transfer of environmental permits may be required
- Seller does not own the Preliminary Application of Carl Gaebe with regard to a High Performance Variable Optical Attenuator
- Seller does not own US Patent 5,708,265 or US Patent 5,591,964 both of which belong to the Craig D Poole Trust

**Exhibit F**  
**Purchase Price Allocation**

Inventory and WIP	\$281,063.78
Prepaid Expenses	\$ 147.00
Fixed Assets	\$142,766.97
Customer Prepayments	(\$2305.83)
	\$421,671.92