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

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2021

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM TO**

Commission File Number 001-37788

WAITR HOLDINGS INC.
(Exact name of Registrant as specified in its Charter)

Delaware	**26-3828008**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
214 Jefferson Street, Suite 200 Lafayette, Louisiana	**70501**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **1-337-534-6881**

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark whether the Registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). YES ☒ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☐
Emerging growth company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

Securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, Par Value $0.0001 Per Share	WTRH	The Nasdaq Stock Market LLC

The number of shares of Registrant's Common Stock outstanding as of November 1, 2021 was 126,617,190.

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PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

WAITR HOLDINGS INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	September 30, 2021 Unaudited	December 31, 2020
ASSETS		
CURRENT ASSETS		
Cash	$ 43,502	$ 84,706
Accounts receivable, net	3,978	2,954
Capitalized contract costs, current	1,091	737
Prepaid expenses and other current assets	6,826	6,657
TOTAL CURRENT ASSETS	**55,397**	**95,054**
Property and equipment, net	4,362	3,503
Capitalized contract costs, noncurrent	3,138	2,429
Goodwill	130,592	106,734
Intangible assets, net	40,616	23,924
Operating lease right-of-use assets	4,743	—
Other noncurrent assets	1,106	588
TOTAL ASSETS	**$ 239,954**	**$ 232,232**
LIABILITIES AND STOCKHOLDERS' EQUITY		
LIABILITIES:		
CURRENT LIABILITIES		
Accounts payable	$ 6,084	$ 4,382
Restaurant food liability	3,398	4,301
Accrued payroll	1,661	4,851
Short-term loans for insurance financing	2,331	2,726
Income tax payable	84	122
Operating lease liabilities	1,654	—
Other current liabilities	19,093	13,922
TOTAL CURRENT LIABILITIES	**34,305**	**30,304**
Long term debt - related party	81,671	94,218
Accrued medical contingency	53	16,987
Operating lease liabilities	3,395	—
Other noncurrent liabilities	2,733	2,627
TOTAL LIABILITIES	**122,157**	**144,136**
Commitments and contingent liabilities (Note 9)		
STOCKHOLDERS' EQUITY:		
Common stock, $0.0001 par value; 249,000,000 shares authorized and 126,616,410 and 111,259,037 shares issued and outstanding at September 30, 2021 and December 31, 2020, respectively	13	11
Additional paid in capital	478,793	451,991
Accumulated deficit	(361,009)	(363,906)
TOTAL STOCKHOLDERS' EQUITY	**117,797**	**88,096**
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	**$ 239,954**	**$ 232,232**

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

WAITR HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
REVENUE	**$ 43,448**	**$ 52,734**	**$ 143,545**	**$ 157,483**
COSTS AND EXPENSES:				
Operations and support	25,043	27,409	86,654	84,321
Sales and marketing	4,965	3,288	13,481	8,854
Research and development	1,310	820	3,163	3,457
General and administrative	10,843	11,380	33,534	32,252
Depreciation and amortization	3,070	2,103	8,952	6,242
Intangible and other asset impairments	186	—	186	29
Loss on disposal of assets	11	4	170	15
TOTAL COSTS AND EXPENSES	**45,428**	**45,004**	**146,140**	**135,170**
INCOME (LOSS) FROM OPERATIONS	**(1,980)**	**7,730**	**(2,595)**	**22,313**
OTHER EXPENSES (INCOME) AND LOSSES (GAINS), NET				
Interest expense	1,751	2,117	5,333	7,521
Interest income	—	(14)	—	(95)
Other (income) expense	(16,006)	965	(10,907)	1,640
NET INCOME FROM CONTINUING OPERATIONS BEFORE INCOME TAXES	**12,275**	**4,662**	**2,979**	**13,247**
Income tax expense	25	18	82	52
NET INCOME FROM CONTINUING OPERATIONS	**$ 12,250**	**$ 4,644**	**$ 2,897**	**$ 13,195**
INCOME PER SHARE:				
Basic	$ 0.10	$ 0.04	$ 0.02	$ 0.14
Diluted	$ 0.09	$ 0.04	$ 0.02	$ 0.13
Weighted average shares used to compute net income per share:				
Weighted average common shares outstanding – basic	119,823,181	109,181,847	115,961,454	93,763,069
Weighted average common shares outstanding – diluted	130,167,296	123,785,750	128,279,820	102,519,454

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

WAITR HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2021	**2020**
Cash flows from operating activities:		
Net income	$ 2,897	$ 13,195
Adjustments to reconcile net income to net cash provided by operating activities:		
Non-cash interest expense	1,948	5,126
Stock-based compensation	6,100	3,178
Loss on disposal of assets	170	15
Depreciation and amortization	8,952	6,242
Intangible and other asset impairments	186	29
Amortization of capitalized contract costs	686	327
Other non-cash income	—	(31)
Other	(93)	—
Changes in assets and liabilities:		
Accounts receivable	583	(653)
Capitalized contract costs	(1,749)	(2,219)
Prepaid expenses and other current assets	16	3,732
Other noncurrent assets	(311)	—
Accounts payable	373	591
Restaurant food liability	(903)	(876)
Income tax payable	(38)	1
Accrued payroll	(3,389)	(3,037)
Accrued medical contingency	(16,933)	(363)
Accrued workers' compensation liability	—	(102)
Other current liabilities	1,032	3,650
Other noncurrent liabilities	(102)	781
Net cash (used in) provided by operating activities	**(575)**	**29,586**
Cash flows from investing activities:		
Purchases of property and equipment	(717)	(968)
Internally developed software	(6,432)	(2,387)
Acquisitions, net of cash acquired	(25,435)	(339)
Collections on notes receivable	—	51
Proceeds from sale of property and equipment	21	14
Net cash used in investing activities	**(32,563)**	**(3,629)**
Cash flows from financing activities:		
Proceeds from issuance of stock	7,900	47,574
Payments on long-term loan	(14,472)	(22,594)
Borrowings under short-term loans for insurance financing	5,209	1,906
Payments on short-term loans for insurance financing	(5,605)	(4,336)
Payments on acquisition loans	(178)	—
Proceeds from exercise of stock options	12	40
Taxes paid related to net settlement on stock-based compensation	(932)	(728)
Net cash (used in) provided by financing activities	**(8,066)**	**21,862**
Net change in cash	**(41,204)**	**47,819**
Cash, beginning of period	84,706	29,317
Cash, end of period	**$ 43,502**	**$ 77,136**
Supplemental disclosures of cash flow information:		
Cash paid during the period for state income taxes	$ —	$ 64
Cash paid during the period for interest	$ 3,385	$ 2,395
Supplemental disclosures of non-cash investing and financing activities:		
Conversion of convertible notes to stock	$ —	$ 12,024
Stock issued as consideration in acquisition	13,724	—
Noncash impact of operating lease assets upon adoption	5,833	—
Noncash impact of operating lease liabilities upon adoption	6,232	—

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

WAITR HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2021
(in thousands, except share data)
(unaudited)

Three Months Ended September 30, 2021

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
Balances at June 30, 2021	**116,701,277**	**$ 11**	**$ 466,192**	**$ (373,259)**	**$ 92,944**
Net income	—	—	—	12,250	12,250
Exercise of stock options and vesting of restricted stock units	667,207	1	3	—	4
Taxes paid related to net settlement on stock-based compensation	—	—	(115)	—	(115)
Stock-based compensation	—	—	1,635	—	1,635
Equity issued for acquisition	2,564,103	—	3,179	—	3,179
Issuance of common stock	6,683,823	1	7,899	—	7,900
Balances at September 30, 2021	**126,616,410**	**$ 13**	**$ 478,793**	**$ (361,009)**	**$ 117,797**

Nine Months Ended September 30, 2021

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
Balances at December 31, 2020	**111,259,037**	**$ 11**	**$ 451,991**	**$ (363,906)**	**$ 88,096**
Net income	—	—	—	2,897	2,897
Exercise of stock options and vesting of restricted stock units	2,518,780	1	11	—	12
Taxes paid related to net settlement on stock-based compensation	—	—	(932)	—	(932)
Stock-based compensation	—	—	6,100	—	6,100
Equity issued for acquisitions	6,154,770	—	13,724	—	13,724
Issuance of common stock	6,683,823	1	7,899	—	7,900
Balances at September 30, 2021	**126,616,410**	**$ 13**	**$ 478,793**	**$ (361,009)**	**$ 117,797**

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

WAITR HOLDINGS INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
THREE AND NINE MONTHS ENDED SEPTEMBER 30, 2020
(in thousands, except share data)
(unaudited)

Three Months Ended September 30, 2020

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
Balances at June 30, 2020	**102,382,511**	**$ 10**	**$ 420,368**	**$ (371,191)**	**$ 49,187**
Net income	—	—	—	4,644	4,644
Exercise of stock options and vesting of restricted stock units	45,071	—	2	—	2
Stock-based compensation	—	—	1,728	—	1,728
Stock issued for conversion of Notes	105,384	—	137	—	137
Issuance of common stock	7,587,655	1	24,989	—	24,990
Balances at September 30, 2020	**110,120,621**	**$ 11**	**$ 447,224**	**$ (366,547)**	**$ 80,688**

Nine Months Ended September 30, 2020

	Common stock		Additional paid in capital	Accumulated deficit	Total stockholders' equity
	Shares	Amount			
Balances at December 31, 2019	**76,579,175**	**$ 8**	**$ 385,137**	**$ (379,742)**	**$ 5,403**
Net income	—	—	—	13,195	13,195
Exercise of stock options and vesting of restricted stock units	514,364	—	40	—	40
Taxes paid related to net settlement on stock-based compensation	—	—	(728)	—	(728)
Stock-based compensation	—	—	3,178	—	3,178
Stock issued for conversion of Notes	9,328,362	1	12,025	—	12,026
Issuance of common stock	23,698,720	2	47,572	—	47,574
Balances at September 30, 2020	**110,120,621**	**$ 11**	**$ 447,224**	**$ (366,547)**	**$ 80,688**

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

WAITR HOLDINGS INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except share and per share data)

1. Organization

Waitr Holdings Inc., a Delaware corporation, together with its wholly owned subsidiaries (the "Company," "Waitr," "we," "us" and "our"), operates an online ordering technology platform, providing delivery, carryout and dine-in options, connecting restaurants, drivers and diners in cities across the United States. The Company's technology platform includes the Waitr, Bite Squad and Delivery Dudes mobile applications, collectively referred to as the "Platforms". The Platforms allow consumers to browse local restaurants and menus, track order and delivery status, and securely store previous orders for ease of use and convenience. Restaurants benefit from the online Platforms through increased exposure to consumers for expanded business in the delivery market and carryout sales.

Additionally, Waitr is engaged in the business of facilitating the entry into merchant agreements by and between merchants and payment processing solution providers, pursuant to the acquisition of the Cape Payment Companies (as defined below) on August 25, 2021 (see *Note 3 – Business Combinations*).

2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation

The unaudited interim condensed consolidated financial statements and accompanying notes have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") and in accordance with the rules and regulations of the United States Securities and Exchange Commission ("SEC") as they apply to interim financial information. Accordingly, the interim condensed consolidated financial statements do not include all of the information and notes required by GAAP for complete annual financial statements, although the Company believes that the disclosures made are adequate to make information not misleading. References to the Accounting Standards Codification ("ASC") and Accounting Standards Updates ("ASUs") included hereafter refer to the ASC and ASUs established by the Financial Accounting Standards Board (the "FASB") as the source of authoritative GAAP.

The unaudited interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto, together with management's discussion and analysis of financial condition and results of operations, contained in our Annual Report on Form 10-K for the year ended December 31, 2020 (the "2020 Form 10-K"). The interim condensed consolidated financial statements are unaudited, but in the Company's opinion, include all adjustments that are necessary for a fair presentation of the results for the periods presented. The interim results are not necessarily indicative of results that may be expected for any other interim period or the fiscal year.

Reclassifications

Certain amounts from prior periods have been reclassified to conform to the current period presentation.

Principles of Consolidation

The accompanying unaudited condensed consolidated financial statements include the accounts of the Company and all wholly owned subsidiaries. Intercompany transactions and balances have been eliminated upon consolidation.

Use of Estimates

The preparation of the unaudited condensed consolidated financial statements in accordance with GAAP requires the Company to make estimates and assumptions that affect the amounts reported in the unaudited condensed consolidated financial statements and accompanying notes. Significant estimates and judgments relied upon in preparing these condensed consolidated financial statements affect the following items:

- incurred loss estimates under our insurance policies with large deductibles or retention levels;
- loss exposure related to claims such as the Medical Contingency (as defined below);
- income taxes;
- useful lives of tangible and intangible assets;
- equity compensation;
- contingencies;

- goodwill and other intangible assets, including the recoverability of intangible assets with finite lives and other long-lived assets; and
- fair value of assets acquired, liabilities assumed and contingent consideration as part of a business combination.

The Company regularly assesses these estimates and records changes to estimates in the period in which they become known. The Company bases its estimates on historical experience and various other assumptions believed to be reasonable under the circumstances. Changes in the economic environment, financial markets, and any other parameters used in determining these estimates could cause actual results to differ from those estimates.

Significant Accounting Policies

See "**Recent Accounting Pronouncements**" below for a description of accounting principle changes adopted during the nine months ended September 30, 2021 related to leases. There have been no other material changes to our significant accounting policies described in the 2020 Form 10-K. See "***Revenue***" below for a description of our revenue recognition policy and "***Contingent Consideration***" for our policy on accounting for earnout provisions as part of a business combination.

Revenue

The Company generates revenue ("Transaction Fees") primarily when diners place an order on one of the Platforms. In the case of diner subscription fees relating to our diner subscription program, revenue is recognized for the receipt of the monthly fee in the applicable month for which the delivery service applies to. Additionally, in connection with the acquisition of the Cape Payment Companies on August 25, 2021, the Company generates revenue by facilitating the entry into merchant agreements by and between merchants and payment processing solution providers. Revenue from such services primarily consists of residual payments received from payment processing solution providers, based on the volume of transactions a payment processing solution provider performs for the merchant. The Company also occasionally receives a bonus up-front fee from payment processing solution providers, paid at the time of a merchant's initial transaction with a payment processing solution provider, based on a price specified in the agreement between the merchant and the payment processing solution provider. Revenue consists of the following for the periods indicated (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Transaction Fees	$ 41,411	$ 52,618	$ 140,138	$ 156,851
Setup and integration fees	—	23	8	437
Other	2,037	93	3,399	195
Total Revenue	**$ 43,448**	**$ 52,734**	**$ 143,545**	**$ 157,483**

Transaction Fees represent the revenue recognized from the Company's obligation to process orders on the Platforms. The performance obligation is satisfied when the Company successfully processes an order placed on one of the Platforms and the restaurant receives the order at their location. The obligation to process orders on the Platforms represents a series of distinct performance obligations satisfied over time that the Company combines into a single performance obligation. Consistent with the recognition objective in ASC Topic 606, *Revenue from Contracts with Customers*, the variable consideration due to the Company for processing orders is recognized on a daily basis. As an agent of the restaurant in the transaction, the Company recognizes Transaction Fees earned from the restaurant on the Platform on a net basis. Transaction Fees also include a fee charged to the end user customer when they request the order be delivered to their location. Revenue is recognized for diner fees once the delivery service is completed. The contract period for substantially all restaurant contracts is one month as both the Company and the restaurant have the ability to unilaterally terminate the contract by providing notice of termination.

Residual fees and bonus up-front fees were immaterial for the three and nine months ended September 30, 2021 and are included in other revenue in the table above. Residual fees represent revenue recognized from the Company's offering of referral services, connecting a merchant with a payment processing service. The Company's performance obligation in its contracts with payment processors is for an unknown or unspecified quantity of transactions and the consideration received is contingent upon the number of transactions submitted by the merchant and processed by the payment processor. Accordingly, the total transaction price is variable. The performance obligation is satisfied when the payment processor finalizes the processing of a transaction through the payment system and transaction volume is available from the payment processor to the Company. Consistent with the recognition objective in ASC Topic 606, the variable consideration due to the Company for serving as the facilitator of the arrangement between the payment processor and merchant is recognized on a daily basis. The Company is the agent in these arrangements as it establishes the relationship between the payment processor and merchant, and thus, recognizes revenue on a net basis. The payment processor is considered the customer of the Company as no direct contract exists with between the merchant and the Company.

The Company records a receivable when it has an unconditional right to the consideration. The balance of accounts receivable, net was $3,978 and $2,954 as of September 30, 2021 and December 31, 2020, respectively, comprised primarily of receivables due from credit card processors, and at September 30, 2021, also comprised of residual commissions receivable.

Costs to Obtain a Contract with a Customer

The Company recognizes an asset for the incremental costs of obtaining a contract with a restaurant and recognizes the expense over the course of the period when the Company expects to recover those costs. The Company has determined that certain internal sales incentives earned at the time when an initial contract is executed meet these requirements. Capitalized sales incentives are amortized to sales and marketing expense on a straight-line basis over the period of benefit, which the Company has determined to be five years. The Company applies a practical expedient to expense costs as incurred for costs to obtain a contract with a customer when the amortization period would have been one year or less.

Deferred costs related to obtaining contracts with restaurants were $3,000 and $2,424 as of September 30, 2021 and December 31, 2020, respectively, out of which $785 and $567, respectively, was classified as current. Amortization of expense for the costs to obtain a contract were $192 and $117 for the three months ended September 30, 2021 and 2020, respectively, and $514 and $264 for the nine months ended September 30, 2021 and 2020, respectively.

Costs to Fulfill a Contract with a Customer

The Company also recognizes an asset for the costs to fulfill a contract with a restaurant when they are specifically identifiable, generate or enhance resources used to satisfy future performance obligations, and are expected to be recovered. The Company has determined that certain costs related to onboarding restaurants onto the Platforms meet the capitalization criteria under ASC Topic 340-40, *Other Assets and Deferred Costs*. Costs related to these implementation activities are deferred and then amortized to operations and support expense on a straight-line basis over the period of benefit, which the Company has determined to be five years.

Deferred costs related to fulfilling contracts with restaurants were $1,229 and $742 as of September 30, 2021 and December 31, 2020, respectively, out of which $306 and $170, respectively, was classified as current. Amortization of expense for the costs to fulfill a contract were $71 and $28 for the three months ended September 30, 2021 and 2020, respectively, and $172 and $63 for the nine months ended September 30, 2021 and 2020, respectively.

Contingent Consideration

The Company acquired the Cape Payment Companies on August 25, 2021 (see *Note 3 – Business Combinations*). Consideration for the acquisition included an earnout provision which provides for a one-time payment to the sellers, if the Cape Payment Companies exceed certain future revenue targets. The contingent consideration obligation for the earnout provision is valued at fair value as of the acquisition date, with subsequent changes in fair value evaluated at the end of each reporting period through the term of the earnout and recognized in earnings in other (income) expense in the unaudited condensed consolidated statement of operations. The contingent consideration obligation is included in other noncurrent liabilities in the unaudited condensed consolidated balance sheet.

Recent Accounting Pronouncements

The Company considered the applicability and impact of all ASUs. ASUs not listed below were assessed and determined to be either not applicable or are expected to have minimal impact on these unaudited condensed consolidated financial statements. Throughout fiscal year 2020, the Company qualified as an “emerging growth company” pursuant to the provisions of the JOBS Act. As an emerging growth company, the Company elected to use the extended transition period for complying with certain new or revised financial accounting standards provided pursuant to Section 13(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Effective January 1, 2021, the Company is no longer an emerging growth company.

Recently Adopted Accounting Standards

Leases

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. The principal objective of ASU 2016-02 is to increase transparency and comparability among organizations by recognizing “right-of-use” lease assets and lease liabilities on the consolidated balance sheet. ASU 2016-02 continues to retain a distinction between finance and operating leases but requires lessees to recognize a right-of-use asset representing its right to use the underlying asset for the lease term and a corresponding lease liability on the balance sheet for all leases with terms greater than twelve months. ASU 2016-02 was effective for and adopted by the Company on January 1, 2021. The Company applied the modified retrospective transition approach, with no adjustment to prior comparative periods. Accordingly, financial information is not adjusted and the disclosures required under ASU 2016-02 are not provided for periods prior to January 1, 2021.

The Company determines if an arrangement is a lease at inception of a contract. A contract is or contains a lease if it conveys the right to control the use of an identified asset for a period of time in exchange for consideration. The Company elected the optional practical expedient package, which includes retaining the current classification of leases, and is utilizing the practical expedient which allows the use of hindsight in determining the lease term and in assessing impairment of its operating lease right-of-use assets. Additionally, the Company has elected to treat lease and non-lease components as a single lease component for all assets. The Company has elected to apply the short-term scope exception for leases with original terms of twelve months or less, and accordingly, recognizes the lease payments for such leases in the statement of operations on a straight-line basis over the lease term and variable lease payments in the period in which the obligation for those payments is incurred.

Under ASU 2016-02, the Company recorded in the unaudited condensed consolidated balance sheet as of January 1, 2021, lease liabilities for operating leases entered into prior to December 31, 2020 of $4,993, representing the present value of its future operating lease payments, and corresponding right-of-use assets of $4,681, based upon the operating lease liabilities adjusted for deferred rent. As the Company's leases do not provide an implicit rate, the Company generally uses its incremental borrowing rate based on the estimated rate of interest for collateralized borrowing over a similar term of the lease payments at commencement date, which is estimated to be 5.0%. The adoption of ASU 2016-02 did not result in a cumulative-effect adjustment on retained earnings. See *Note 9 – Commitments and Contingencies* for additional details.

Other

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which simplifies the accounting for income taxes by removing certain exceptions to the general principles for income taxes and also improves consistent application by clarifying and amending existing guidance. ASU 2019-12 was effective for and adopted by the Company on January 1, 2021. The adoption of ASU 2019-12 did not have a material impact on the Company's disclosures or consolidated financial statements.

In July 2017, the FASB issued ASU 2017-11, *Earnings Per Share (Topic 260), Distinguishing Liabilities from Equity (Topic 480) and Derivatives and Hedging (Topic 815): I. Accounting for Certain Financial Instruments with Down Round Features; II. Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception*. Part I of ASU 2017-11 addresses the complexity of accounting for certain financial instruments with down round features. Down round features are features of certain equity-linked instruments (or embedded features) that result in the strike price being reduced based on the pricing of future equity offerings. Current accounting guidance creates cost and complexity for entities that issue financial instruments (such as warrants and convertible instruments) with down round features that require fair value measurement of the entire instrument or conversion option. Part II of ASU 2017-11 addresses the difficulty of navigating ASC Topic 480, *Distinguishing Liabilities from Equity*, because of the existence of extensive pending content in ASC 480. This pending content is the result of the indefinite deferral of accounting requirements about mandatorily redeemable financial instruments of certain nonpublic entities and certain mandatorily redeemable noncontrolling interests. Part II of ASU 2017-11 does not have an accounting effect. ASU 2017-11 was effective for and adopted by the Company on January 1, 2021. The adoption of ASU 2017-11 did not have a material impact on the Company's disclosures or consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, to replace the incurred loss impairment methodology under current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. ASU 2016-13 uses a forward-looking expected credit loss model for accounts receivables, loans, and other financial instruments and expands disclosure requirements. ASU 2016-13 was effective for and adopted by the Company on January 1, 2021. The adoption of ASU 2016-13 did not have a material impact on the Company's disclosures or consolidated financial statements.

Pending Accounting Standards

In August 2020, the FASB issued ASU 2020-06, *Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40)*, which simplifies the accounting for convertible instruments by reducing the number of accounting models for convertible debt, resulting in fewer embedded conversion features being separately recognized from the host contract as compared with current GAAP. The guidance also addresses how convertible instruments are accounted for in the diluted earnings per share calculation. ASU 2020-06 is effective for public business entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years, with early adoption permitted no earlier than fiscal years beginning after December 15, 2020. The Company is currently evaluating the impacts of the provisions of ASU 2020-06 on its consolidated financial statements and related disclosures.

3. Business Combinations

Cape Payment Companies Acquisition

On August 25, 2021, the Company completed the acquisition of certain assets and properties of ProMerchant LLC, Cape Cod Merchant Services LLC and Flow Payments LLC (collectively referred to herein as the "Cape Payment Companies"), pursuant to three substantially identical asset purchase agreements (collectively referred to herein as the "Cape Payment Agreements"). The Cape Payment Companies are engaged in the business of facilitating the entry into merchant agreements by and between merchants and payment processing solution providers and receive residual payments from the payment providers. The purchase price for the Cape Payment Companies consisted of $12,000 in cash, subject to certain purchase price adjustments, and 2,564,103 shares of the Company's common stock valued at $1.24 per share (the closing price of the Company's common stock on August 24, 2021). Additionally, the Cape Payment Agreements include an earnout provision which provided for a one-time payment to the sellers if the Cape Payment Companies exceed certain future revenue targets. The earnout provision, if any, is payable no later than March 30, 2023, and was valued at $1,686 as of the acquisition date. The transactions contemplated by the Cape Payment Agreements are referred to herein as the "Cape Payment Acquisition." The acquisition is part of the Company's overall growth strategy, positioning the Company to offer a full suite of payment processing services to its current base of merchants. The following represents the preliminary estimated consideration for the Cape Payment Acquisition:

(in thousands, except per share amount)		
Shares transferred at closing		2,564
Value per share	$	1.24
Total share consideration	$	3,179
Plus: cash transferred to Cape Payment Companies		12,000
Total estimated consideration at closing		15,179
Contingent consideration		1,686
Total estimated consideration	$	16,865

The Cape Payment Acquisition was considered a business combination in accordance with ASC 805, and was accounted for using the acquisition method. Under the acquisition method of accounting, acquired assets and assumed liabilities are recorded based on their respective fair values on the acquisition date, with the excess of the consideration transferred in the acquisition over the fair value of the assets and liabilities acquired recorded as goodwill. The preliminary estimated fair value of assets acquired and liabilities assumed consists of the following (in thousands):

Cash and cash equivalents	$	42
Accounts receivable		1,180
Prepaid expenses and other current assets		7
Intangible assets		6,850
Other noncurrent assets		17
Accrued expenses and other current liabilities		(746)
Total assets acquired, net of liabilities assumed		7,350
Goodwill		9,515
Total estimated consideration	$	16,865

The Company engaged a third-party specialist to assist management in estimating the fair value of the assets and liabilities and the contingent consideration for the earnout provision. Goodwill is attributable to the future anticipated economic benefits from combining operations of the Company and the Cape Payment Companies, including future growth in the payment processing arena, future customer relationships and the workforce in place. All of the goodwill is expected to be deductible for U.S. federal tax purposes. While the Company has substantially completed the determination of the fair values of the assets acquired and liabilities assumed, the Company is still finalizing the calculation of the purchase price adjustments pursuant to the Cape Payment Agreements, which could affect the final fair value analysis. The Company anticipates finalizing the determination of the fair values by the end of 2021.

The following table sets forth the components of estimated identifiable intangible assets acquired from the Cape Payment Companies and their estimated useful lives as of the acquisition date:

	Amortizable Life (in years)	**Value (in thousands)**
Customer relationships	7.5	$ 6,500
Trade name	3.0	350
Total		**$ 6,850**

The acquired identifiable intangible assets are amortized on a straight-line basis to reflect the pattern in which the economic benefits of the intangible assets are consumed. The acquired customer relationships were valued using the income approach, specifically, the multi-period excess earnings method, which measures the after-tax cash flows attributable to the existing customer relationships after deducting the operating costs and contributory asset charges associated with economic rents of supporting the existing customer relationships. The acquired trade name was valued using the income approach, specifically, the relief from royalty rate method, which measures the cash flow streams attributable to the trade name in the form of royalty payments that would be paid to the owner of the trade name in return for the rights to use the trade name. These fair value measurements were based on significant inputs not observable in the market and thus represent Level 3 measurements within the fair value hierarchy. These inputs required significant judgments and estimates at the time of the valuation. See *Note 12 – Fair Value Measurements* for details of the valuation method used in estimating the fair value of the earnout provision as of acquisition date.

The results of operations of the Cape Payment Companies are included in our condensed consolidated financial statements beginning on the acquisition date, August 25, 2021, and were immaterial. Pro forma results were immaterial to the Company.

Delivery Dudes Acquisition

On March 11, 2021, the Company completed the acquisition of certain assets and properties from Dude Holdings LLC ("Delivery Dudes"), a third-party delivery business primarily serving the South Florida market, for $11,500 in cash, subject to certain purchase price adjustments, and 3,562,577 shares of the Company's common stock valued at $2.96 per share (the closing price of the Company's common stock on March 11, 2021) (the "Delivery Dudes Acquisition"). In the three months ended June 30, 2021, the Company adjusted the per share fair value of the stock consideration from $3.23 (the average volume weighted average price of the Company's common stock for the five consecutive trading days prior to March 9, 2021), down to the closing price of $2.96, resulting in a reduction of total consideration of $955 to $22,045. The acquisition expands the Company's market presence in the on-demand delivery service sector. The following represents the purchase consideration:

(in thousands, except per share amount)		
Shares transferred at closing		3,562
Value per share	$	2.96
Total share consideration	$	10,545
Plus: cash transferred to Delivery Dudes members		11,500
Total consideration	$	22,045

The Delivery Dudes Acquisition was considered a business combination in accordance with ASC 805, and was accounted for using the acquisition method. The fair value of assets acquired and liabilities assumed consists of the following (in thousands):

Cash and cash equivalents	$	573
Accounts receivable		330
Prepaid expenses and other current assets		130
Intangible assets		7,700
Other noncurrent assets		33
Accrued expenses and other current liabilities		(1,035)
Other noncurrent liabilities		(29)
Total assets acquired, net of liabilities assumed		7,702
Goodwill		14,343
Total consideration	$	22,045

The Company engaged a third-party specialist to assist management in estimating the fair value of the assets and liabilities. Goodwill is attributable to the future anticipated economic benefits from combining operations of the Company and Delivery Dudes, including future growth into new markets, future customer relationships and the workforce in place. All of the goodwill is expected to be deductible for U.S. federal income tax purposes.

The following table sets forth the components of identifiable intangible assets acquired from Delivery Dudes and their estimated useful lives as of the acquisition date:

	Amortizable Life (in years)	Value (in thousands)
Customer relationships	7.5	$ 4,700
Franchise relationships	1.0	250
Trade name	3.0	800
Developed technology	2.0	1,900
In-process research and development	2.0	50
Total		**$ 7,700**

The acquired identifiable intangible assets are amortized on a straight-line basis to reflect the pattern in which the economic benefits of the intangible assets are consumed. The acquired customer relationships were valued using the income approach, specifically, the multi-period excess earnings method, which measures the after-tax cash flows attributable to the existing customer relationships after deducting the operating costs and contributory asset charges associated with economic rents of supporting the existing customer relationships. The franchise relationships were also valued using the multi-period excess earnings method. The acquired trade name was valued using the income approach, specifically, the relief from royalty rate method, which measures the cash flow streams attributable to the trade name in the form of royalty payments that would be paid to the owner of the trade name in return for the rights to use the trade name. Developed technology was valued based on the cost approach, specifically the “with & without” methodology which considers the direct replacement and opportunity costs associated with the underlying technology, and in-process research and development assets were valued using the replacement cost method. These fair value measurements were based on significant inputs not observable in the market and thus represent Level 3 measurements within the fair value hierarchy. These inputs required significant judgments and estimates at the time of the valuation.

The results of operations of Delivery Dudes are included in our unaudited condensed consolidated financial statements beginning on the acquisition date, March 11, 2021. Revenue and net loss of Delivery Dudes included in the unaudited condensed consolidated statement of operations in the three months ended September 30, 2021 totaled approximately $2,941 and $848, respectively, and in the nine months ended September 30, 2021 totaled approximately $6,841 and $1,450, respectively.

The Company subsequently acquired the assets of six Delivery Dudes franchisees during the six months ended September 30, 2021 for total consideration of approximately $2,464, including $2,431 in cash. The asset acquisitions were accounted for under the acquisition method with the purchase consideration allocated to customer relationships. The customer relationship assets are amortized on a straight-line basis over 7.5 years, which reflects the pattern in which the economic benefits of the acquired assets are consumed. The results of operations of the acquired franchisees are included in our condensed consolidated financial statements beginning on their acquisition dates and were immaterial. Pro forma results were deemed immaterial to the Company.

Additional Information

In connection with the Delivery Dudes Acquisition and Cape Payment Acquisition, the Company incurred direct and incremental costs of $171 and $840 during the three and nine months ended September 30, 2021, respectively, consisting of legal and professional fees, which are included in general and administrative expenses in the unaudited condensed consolidated statement of operations in such periods

Pro-Forma Financial Information (Unaudited)

Supplemental condensed consolidated results of the Company on an unaudited pro forma basis as if the Delivery Dudes Acquisition had been consummated on January 1, 2020 are included in the table below (in thousands).

	Three months ended September 30,		Nine months ended September 30,	
	2021	2020	2021	2020
Net revenue	$ 43,448	$ 55,622	$ 146,021	$ 165,405
Net income	$ 12,250	$ 4,942	$ 3,261	$ 13,844

These pro forma results were based on estimates and assumptions, which the Company believes are reasonable. They are not the results that would have been realized had the Company been a consolidated company during the periods presented and are not indicative of consolidated results of operations in future periods. Acquisition costs and other non-recurring charges incurred are included in the periods presented.

4. Accounts Receivable, Net

Accounts receivable consist of the following (in thousands):

	September 30, 2021	December 31, 2020
Credit card receivables	$ 2,501	$ 3,013
Residual commissions receivable	1,384	—
Receivables from restaurants and customers	378	334
Accounts receivable	$ 4,263	$ 3,347
Less: allowance for doubtful accounts and chargebacks	(285)	(393)
Accounts receivable, net	**$ 3,978**	**$ 2,954**

5. Intangibles Assets and Goodwill

Intangible Assets

Intangible assets with finite useful lives are amortized using the straight-line method over their estimated useful lives and include internally developed software, as well as software to be otherwise marketed, and trademarks/trade name/patents and customer relationships. The Company has determined that the Waitr trademark intangible asset is an indefinite-lived asset and therefore is not subject to amortization but is evaluated annually for impairment. The Bite Squad, Delivery Dudes and Cape Payment Companies trade name intangible assets, however, are being amortized over their estimated useful lives.

Intangible assets are stated at cost or acquisition-date fair value less accumulated amortization and consist of the following (in thousands):

	As of September 30, 2021			
	Gross Carrying Amount	Accumulated Amortization	Accumulated Impairment	Intangible Assets, Net
Software	$ 33,687	$ (8,523)	$ (12,011)	$ 13,153
Trademarks/Trade name/Patents	6,555	(5,042)	—	1,513
Customer Relationships	96,509	(13,181)	(57,378)	25,950
Total	**$ 136,751**	**$ (26,746)**	**$ (69,389)**	**$ 40,616**

	As of December 31, 2020			
	Gross Carrying Amount	Accumulated Amortization	Accumulated Impairment	Intangible Assets, Net
Software	$ 25,204	$ (6,099)	$ (11,825)	$ 7,280
Trademarks/Trade name/Patents	5,405	(3,526)	—	1,879
Customer Relationships	82,845	(10,702)	(57,378)	14,765
Total	**$ 113,454**	**$ (20,327)**	**$ (69,203)**	**$ 23,924**

During the nine months ended September 30, 2021, the Company acquired intangible assets in connection with the Delivery Dudes Acquisition and the Cape Payment Acquisition (*see Note 3 – Business Combinations*). Additionally, during the nine months ended September 30, 2021, the Company capitalized approximately $6,432 of software costs related to the development of the Platforms, with an estimated useful life of three years.

The Company recorded amortization expense of $2,354 and $1,581 for the three months ended September 30, 2021 and 2020, respectively, and $6,419 and $4,683 for the nine months ended September 30, 2021 and 2020, respectively. Estimated future amortization expense of intangible assets as of September 30, 2021 is as follows (in thousands):

	Amortization
The remainder of 2021	$ 2,072
2022	11,322
2023	9,076
2024	6,904
2025	4,526
Thereafter	6,711
Total future amortization	**$ 40,611**

Goodwill

The change in the Company's goodwill balance is as follows for the nine months ended September 30, 2021 and the year ended December 31, 2020 (in thousands):

	September 30, 2021	December 31, 2020
Balance, beginning of period	$ 106,734	$ 106,734
Acquisitions during the period	23,858	—
Balance, end of period	**$ 130,592**	**$ 106,734**

The Company recorded $23,858 of goodwill during the nine months ended September 30, 2021, including $14,343 associated with the Delivery Dudes Acquisition and $9,515 associated with the Cape Payment Acquisition (see *Note 3 – Business Combinations*).

6. Other Current Liabilities

Other current liabilities consist of the following (in thousands):

	September 30, 2021	December 31, 2020
Accrued insurance expenses	$ 4,443	$ 3,392
Accrued estimated workers' compensation expenses	829	1,725
Accrued medical contingency	370	448
Accrued sales tax payable	230	418
Accrued cash incentives	2,747	60
Other accrued expenses	4,081	4,001
Unclaimed property	2,123	1,679
Other current liabilities	4,270	2,199
Total other current liabilities	**$ 19,093**	**$ 13,922**

7. Debt

The Company's outstanding debt obligations are as follows (in thousands):

	Coupon Rate Range in 2020 through 3Q21	Effective Interest Rate at September 30, 2021	Maturity	September 30, 2021	December 31, 2020
Term Loan	5.125% - 7.125%	10.62%	November 2023	$ 35,007	$ 49,479
Notes	4.0% - 6.0%	6.49%	November 2023	49,504	49,504
				$ 84,511	$ 98,983
Less: unamortized debt issuance costs on Term Loan				(2,351)	(3,541)
Less: unamortized debt issuance costs on Notes				(489)	(1,224)
Long term debt - related party				**$ 81,671**	**$ 94,218**
Short-term loan for insurance financing	3.99%	n/a	March 2022	2,331	2,726
Total outstanding debt				**$ 84,002**	**$ 96,944**

Interest expense related to the Company's outstanding debt totaled $1,751 and $2,117 for the three months ended September 30, 2021 and 2020, respectively, and $5,333 and $7,521 for the nine months ended September 30, 2021 and 2020, respectively. Interest expense includes interest on outstanding borrowings and amortization of debt issuance costs. See *Note 14 – Related Party Transactions* for additional information regarding the Company's related party long-term debt.

Term Loan

The Company maintains an agreement with Luxor Capital Group, LP ("Luxor Capital") (as amended or otherwise modified from time to time, the "Credit Agreement"). The Credit Agreement provides for a senior secured first priority term loan (the "Term Loan") which is guaranteed by certain subsidiaries of the Company. In connection with the Term Loan, the Company issued to Luxor Capital warrants which are currently exercisable for 497,507 shares of the Company's common stock (see *Note 11 – Stockholders' Equity*). In March 2021, the Company made a $15,000 prepayment on the Term Loan pursuant to an amendment to the Credit

Agreement and an amendment to the Convertible Notes Agreement (defined below under *Notes*). The amendments were treated as a debt modification, and thus, no gain or loss was recorded. A new effective interest rate for the Term Loan that equates the revised cash flows to the carrying amount of the original debt was computed and applied prospectively.

Interest on the Term Loan is payable quarterly, in cash or, at the election of the Company, as a payment-in-kind, with interest paid in-kind being added to the aggregate principal balance. The Credit Agreement includes a number of customary covenants that, among other things, limit or restrict the ability of each of the Company and its subsidiaries to incur additional debt, incur liens on assets, engage in mergers or consolidations, dispose of assets, pay dividends or repurchase capital stock and repay certain junior indebtedness. The Credit Agreement also includes customary affirmative covenants, representations and warranties and events of default. We believe that we were in compliance with all covenants under the Credit Agreement as of September 30, 2021.

Notes

Additionally, the Company issued unsecured convertible promissory notes (the “Notes”) to Luxor Capital Partners, LP, Luxor Capital Partners Offshore Master Fund, LP, Luxor Wavefront, LP and Lugard Road Capital Master Fund, LP (the “Luxor Entities”) pursuant to an agreement, herein referred to as the “Convertible Notes Agreement”.

Interest on the Notes is payable quarterly, in cash or, at the Company’s election, up to one-half of the dollar amount of an interest payment due can be paid-in-kind. Interest paid-in-kind is added to the aggregate principal balance. The Notes include customary anti-dilution protection, including broad-based weighted average adjustments for certain issuances of additional shares. Upon maturity, the outstanding Notes (and any accrued but unpaid interest) will be repaid in cash or converted into shares of common stock, at the holder’s election. The Notes are currently convertible at the holder’s election into shares of the Company’s common stock at a rate of $10.05 per share.

The Company’s payment obligations on the Notes are not guaranteed. The Convertible Notes Agreement contains negative covenants, affirmative covenants, representations and warranties and events of default that are substantially similar to those that are set forth in the Credit Agreement (except those that relate to collateral and related security interests, which are not contained in the Convertible Notes Agreement or otherwise applicable to the Notes). We believe that we were in compliance with all covenants under the Convertible Notes Agreement as of September 30, 2021.

Short-Term Loan

The Company has an outstanding short-term loan as of September 30, 2021 for the purpose of financing a portion of an annual insurance premium obligation. The loan is payable in monthly installments until maturity.

8. Income Taxes

The Company provides for income taxes using an asset and liability approach under which deferred income taxes are provided for based upon enacted tax laws and rates applicable to periods in which the taxes become payable. The Company recorded income tax expense of $25 and $18 for the three months ended September 30, 2021 and 2020, respectively, and $82 and $52 for the nine months ended September 30, 2021 and 2020, respectively. The Company’s income tax expense is entirely related to state taxes in various jurisdictions. The Company recorded a full valuation allowance against net deferred tax assets as of September 30, 2021 and December 31, 2020 as the Company has generated net operating losses prior to the second quarter of 2020 and in the first and second quarters of 2021, and the Company did not consider future book income as a source of taxable income when assessing if a portion of the deferred tax assets is more likely than not to be realized.

As of September 30, 2021, the Company recognized $1,334 in employer payroll tax deferrals under the Coronavirus Aid, Relief and Economic Security (CARES) Act, of which 50% will be paid in 2021 and 50% will be paid in 2022. These amounts are reflected in other current and non-current liabilities in the accompanying unaudited condensed consolidated balance sheet.

9. Commitments and Contingent Liabilities

Leases

As of September 30, 2021, the Company had operating lease agreements for office facilities in various locations in the United States, which expire on various dates through August 2026. The terms of the lease agreements provide for rental payments that generally increase on an annual basis. The Company does not have any finance leases. The Company recognizes expense for leases on a straight-line basis over the lease term, which the Company generally expects to be the non-cancellable period of the lease. As of September 30, 2021, the Company recognized on its unaudited condensed consolidated balance sheet operating right-of-use assets of $4,743 and current and noncurrent operating lease liabilities of $1,654 and $3,395, respectively. Operating lease costs recognized in

the unaudited condensed consolidated statement of operations for the three and nine months ended September 30, 2021 totaled $463 and $1,317, respectively.

The following table presents supplemental cash flow information and the weighted-average lease term and discount rate for the Company's operating leases for the nine months ended September 30, 2021:

	Nine Months Ended September 30, 2021
Cash paid for operating lease liabilities (in thousands)	$ 1,184
Weighted-average remaining lease term (years)	3.9
Weighted-average discount rate	5.0%

As of September 30, 2021, the future minimum lease payments required under non-cancelable operating leases were as follows (in thousands):

	Amount
The remainder of 2021	$ 504
2022	1,810
2023	1,148
2024	831
2025	803
Thereafter	535
Total future lease payments	**$ 5,631**
Less: imputed interest	(582)
Present value of operating lease liabilities	**$ 5,049**

Medical Contingency Claim

During the three months ended September 30, 2020, the Company identified and corrected an immaterial error related to the understatement of an accrued medical contingency (the "Medical Contingency"). The Company became liable for the claim due to the insolvency of a previous workers compensation insurer. The Company assessed the materiality of the error, both quantitatively and qualitatively, in accordance with the SEC's Staff Accounting Bulletin No. 99, and concluded that the error was not material to any of its previously reported financial statements based upon qualitative aspects of the error. The Company engaged a third-party actuary to assist in the calculation of the estimated loss exposure and determined that the accrued liability recorded at December 31, 2018 for the claim was understated by approximately $17,505, which resulted in additional expense for the year ended December 31, 2018 of $17,505. As of December 31, 2020, the long-term portion of the estimated Medical Contingency claim totaled $16,987 and is included in the unaudited condensed consolidated balance sheet as accrued medical contingency. The current portion of the Medical Contingency totaled $448 as of December 31, 2020 and is included in other current liabilities.

The death of the individual in August 2021 associated with the Medical Contingency was new information the Company deemed a change in accounting estimate for the total liability. The total estimated loss exposure was determined to be $423 as of September 30, 2021, consisting primarily of remaining medical expenses and dependent death benefits. The long-term portion of the estimated Medical Contingency totaled $53 and is included in the unaudited condensed consolidated balance sheet as accrued medical contingency. The current portion of the Medical Contingency totaled $370 as of September 30, 2021 and is included in other current liabilities. Included in other income in the unaudited condensed consolidated statement of operations for the three and nine months ended September 30, 2021 is $16,715 related to the change in estimate of the Medical Contingency.

Workers Compensation and Auto Policy Claims

We establish a liability under our workers' compensation and auto insurance policies for claims incurred and an estimate for claims incurred but not yet reported. As of September 30, 2021 and December 31, 2020, $4,523 and $4,697, respectively, in outstanding workers' compensation and auto policy reserves are included in the unaudited condensed consolidated balance sheet in other current liabilities.

Legal Matters

In July 2016, Waiter.com, Inc. filed a lawsuit against Waitr Inc. in the United States District Court for the Western District of Louisiana, alleging trademark infringement based on Waitr's use of the "Waitr" trademark and logo, Civil Action No.: 2:16-CV-01041. The plaintiff sought injunctive relief and damages relating to Waitr's use of the "Waitr" name and logo. During the third quarter of 2020, the trial date was rescheduled to June 2021. On June 22, 2021, the Company entered into a License, Release and Settlement Agreement (the "Settlement") to settle all claims related to this lawsuit. Pursuant to the Settlement, the Company paid the plaintiff $4,700 in cash on July 1, 2021. In connection with the Settlement, we agreed to adopt a new trademark or tradename to replace the Waitr trademark and to

discontinue use of the Waitr trademark in connection with the marketing, sale or provision of any web-based or mobile app-based delivery, pick-up, carry-out or dine-in services using the Waitr trademark by June 22, 2022, unless extended by eight additional months in exchange for a one-time payment of $800. The Settlement payment is included in other expense in the unaudited condensed consolidated statement of operations for the three and nine months ended September 30, 2021.

In April 2019, the Company was named as a defendant in a class action complaint filed by certain current and former restaurant partners, captioned *Bobby's Country Cookin', et al v. Waitr,* which is currently pending in the United States District Court for the Western District of Louisiana. Plaintiffs allege, among other things, claims for breach of contract, violation of the duty of good faith and fair dealing, and seek recovery on behalf of themselves and two separate classes. Based on the current class definitions, as many as 10,000 restaurant partners could be members of the two separate classes that the representative plaintiffs are attempting to certify. An initial mediation session is scheduled for mid-November 2021. Waitr maintains that the underlying allegations and claims lack merit, and that the classes, as pled, are incapable of certification. Waitr continues to vigorously defend the suit.

In September 2019, Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC were named as defendants in a putative class action lawsuit entitled *Walter Welch, Individually and on Behalf of all Others Similarly Situated vs. Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC*. The case was filed in the Western District of Louisiana, Lake Charles Division. In the lawsuit, the plaintiff asserts putative class action claims alleging, inter alia, that various defendants made false and misleading statements in securities filings, engaged in fraud, and violated accounting and securities rules. A similar putative class action lawsuit, entitled *Kelly Bates, Individually and on Behalf of all Others Similarly Situated vs. Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC*, was filed in that same court in November 2019. These two cases were consolidated, and an amended complaint was filed in October 2020. The Company filed a motion to dismiss in February 2021. The Court has heard oral argument on that motion, and has taken the motion under advisement. Waitr believes that this lawsuit lacks merit and that it has strong defenses to all of the claims alleged. Waitr continues to vigorously defend the suit.

In addition to the lawsuits described above, Waitr is involved in other litigation arising from the normal course of business activities, including, without limitation, labor and employment claims, allegations of infringement, misappropriation and other violations of intellectual property or other rights, lawsuits and claims involving personal injuries, physical damage and workers' compensation benefits suffered as a result of alleged conduct involving its employees, independent contractor drivers, and third-party negligence. Although Waitr believes that it maintains insurance with standard deductibles that generally covers liability for potential damages in many of these matters where coverage is available on acceptable terms (it is not maintained for claims involving intellectual property), insurance coverage is not guaranteed, often these claims are met with denial of coverage positions by the carriers, and there are limits to insurance coverage; accordingly, we could suffer material losses as a result of these claims, the denial of coverage for such claims or damages awarded for any such claim that exceeds coverage.

10. Stock-Based Awards and Cash-Based Awards

In June 2020, the Company's stockholders approved the Waitr Holdings Inc. Amended and Restated 2018 Omnibus Incentive Plan (the "2018 Incentive Plan"), which permits the granting of awards in the form of incentive stock options, non-qualified stock options, stock appreciation rights, restricted stock, restricted stock units, performance-based awards, and other stock-based or cash-based awards. As of September 30, 2021, there were 5,008,194 shares of common stock available for future grants pursuant to the 2018 Incentive Plan. The Company also has outstanding equity awards under the 2014 Stock Plan (as amended in 2017, the "Amended 2014 Plan"). Total compensation expense related to awards under the Company's incentive plans was $1,635 and $1,728 for the three months ended September 30, 2021 and 2020, respectively, and $6,100 and $3,178 for the nine months ended September 30, 2021 and 2020, respectively.

Stock-Based Awards

Stock Options

During the three months ended March 31, 2021, 500,000 stock options were granted under the 2018 Incentive Plan, with an aggregate grant date fair value of $1,095 and a weighted average exercise price of $2.78. Such stock options were subsequently forfeited during the three months ended September 30, 2021. On January 3, 2020, 9,572,397 stock options were granted under the 2018 Incentive Plan to the Company's chief executive officer (the "Grimstad Option"), with an aggregate grant date fair value of $2,297. The exercise price of the options is $0.37, and the options vest 50% on each of the first two anniversaries of the grant date. The options have a five-year exercise term.

The fair value of each stock option grant during the nine months ended September 30, 2021 and 2020 was estimated as of the grant date using an option-pricing model with the assumptions included in the table below. Expected volatility for stock options is

estimated based on a combination of the historical volatility of the Company's stock price and the historical and implied volatility of comparable publicly traded companies.

	2021	2020
Weighted-average fair value at grant	$ 2.19	$ 0.24
Risk free interest rate	0.46%	1.54%
Expected volatility	131.4%	100.6%
Expected option life (years)	3.59	3.25

The Company recognized compensation expense for stock options of $258 and $361 for the three months ended September 30, 2021 and 2020, respectively, and $950 and $1,099 for the nine months ended September 30, 2021 and 2020, respectively. Unrecognized compensation cost related to unvested stock options as of September 30, 2021 totaled $314, with a weighted average remaining vesting period of approximately 0.3 years.

The stock option activity under the Company's incentive plans during the nine months ended September 30, 2021 and 2020 is as follows:

	Nine Months Ended September 30, 2021			Nine Months Ended September 30, 2020		
	Number of Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value
Balance, beginning of period	**9,753,257**	**$ 0.43**	**$ 0.33**	**445,721**	**$ 3.66**	**$ 5.04**
Granted	500,000	2.78	2.19	9,572,397	0.37	0.24
Exercised	(12,012)	0.92	4.36	(56,814)	0.69	3.60
Forfeited	(524,830)	2.95	2.32	(99,657)	5.70	5.72
Expired	(34,151)	7.19	5.10	(94,511)	2.96	5.48
Balance, end of period	**9,682,264**	**$ 0.39**	**$ 0.29**	**9,767,136**	**$ 0.44**	**$ 0.33**

Outstanding stock options, which were fully vested and expected to vest and exercisable are as follows as of September 30, 2021 and December 31, 2020:

	As of September 30, 2021		As of December 31, 2020	
	Options Fully Vested and Expected to Vest	Options Exercisable	Options Fully Vested and Expected to Vest	Options Exercisable
Number of Options	9,682,264	4,892,673	9,753,257	132,846
Weighted-average remaining contractual term (years)	3.29	3.32	4.07	6.82
Weighted-average exercise price	$ 0.39	$ 0.41	$ 0.43	$ 3.20
Aggregate Intrinsic Value (in thousands)	$ 4,936	$ 2,469	$ 23,285	$ 178

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value (the difference between the fair value of the common stock and the exercise price, multiplied by the number of in-the-money options) that would have been received by the option holders had all option holders exercised their in-the-money options on each date. This amount will change in future periods based on the fair value of the Company's stock and the number of options outstanding. The aggregate intrinsic value of awards exercised was $1 and $8 during the three months ended September 30, 2021 and 2020, respectively, and $21 and $49 during the nine months ended September 30, 2021 and 2020, respectively. Upon exercise, the Company issued new common stock.

Restricted Stock

The Company's restricted stock grants include performance-based and time-based vesting awards. The fair value of restricted shares is typically determined based on the closing price of the Company's common stock on the date of grant.

Performance-Based Awards

As of September 30, 2021, there were 3,159,325 performance-based RSUs outstanding under the Company's 2018 Incentive Plan, including 3,134,325 RSUs granted to the Company's chief executive officer in April 2020 (the "Grimstad RSU Grant"). The Grimstad RSU Grant has an aggregate grant date fair value of $3,542 and vests in full in the event of a change of control, as defined in Mr. Grimstad's employment agreement with the Company, subject to his continuous employment with the Company through the date of a change of control; provided, however, that the Grimstad RSU Grant shall fully vest in the event that Mr. Grimstad terminates his

employment for good reason or he is terminated by the Company for reason other than misconduct. No stock-based compensation expense will be recognized for the Grimstad RSU Grant until such time that is probable that the performance goal will be achieved, or at the time that Mr. Grimstad terminates his employment for good reason or he is terminated by the Company for reason other than misconduct, should either occur.

Awards with Time-Based Vesting

During the nine months ended September 30, 2021, a total of 7,885,960 RSUs with time-based vesting were granted pursuant to the Company's 2018 Incentive Plan (with an aggregate grant fair value of value of $16,683). Included in such grants were 600,960 RSUs granted to non-employee directors vesting upon the earlier of June 15, 2022 and the date of the 2022 annual meeting of the Company's stockholders and 3,785,000 RSUs granted to employees and consultants vesting primarily over three years. The RSU grants vest in various manners in accordance with the terms specified in the applicable award agreements, all of which accelerate and vest upon a change of control. Also included in such grants was an award of 3,500,000 RSUs granted (the "Grimstad 2021 RSU Grant") to Mr. Grimstad, with an aggregate grant date fair value of $8,960, in connection with an extension of his employment agreement through January 2025. The Grimstad 2021 RSU Grant will vest in three equal installments on the first, second and third anniversaries of January 3, 2022, subject to Mr. Grimstad's continued employment through the applicable vesting date, and shall fully vest upon the consummation of a change of control, subject to Mr.Grimstad's continued employment through the closing of such change of control or in the event that Mr. Grimstad terminates his employment for good reason or he is terminated by the Company for reason other than misconduct.

The Company recognized compensation expense for restricted stock of $1,377 and $1,367 during the three months ended September 30, 2021 and 2020, respectively, and $5,150 and $2,079 during the nine months ended September 30, 2021 and 2020, respectively. Unrecognized compensation cost related to unvested time-based RSUs as of September 30, 2021 totaled $16,893, with a weighted average remaining vesting period of approximately 2.68 years. The total fair value of restricted shares that vested during the three months ended September 30, 2021 and 2020 was $1,219 and $177, respectively, and during the nine months ended September 30, 2021 and 2020 was $6,605 and $1,330, respectively.

The activity for restricted stock with time-based vesting under the Company's incentive plans is as follows for the nine months ended September 30, 2021 and 2020:

	Nine Months Ended September 30, 2021			Nine Months Ended September 30, 2020		
	Number of Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (years)	Number of Shares	Weighted Average Grant Date Fair Value	Weighted Average Remaining Contractual Term (years)
Nonvested, beginning of period	**4,558,603**	**$ 2.23**	**1.71**	**3,182,639**	**$ 1.42**	**2.16**
Granted	7,885,960	2.12		4,227,501	2.27	
Shares vested	(2,840,230)	2.22		(588,054)	1.94	
Forfeitures	(671,592)	2.25		(1,903,984)	1.45	
Nonvested, end of period	**8,932,741**	**$ 2.13**	**2.68**	**4,918,102**	**$ 2.08**	**1.74**

Cash-Based Awards

Performance Bonus Agreement

On April 23, 2020, the Company entered into a performance bonus agreement with Mr. Grimstad, which was extended through January 3, 2025 in connection with the extension of his employment agreement. Pursuant to the performance bonus agreement, upon the occurrence of a change of control in which the holders of the Company's common stock receive per share consideration that is equal to or greater than $2.00, subject to adjustment in accordance with the 2018 Incentive Plan, the Company shall pay Mr. Grimstad an amount equal to $5,000 (the "Bonus"). In order to receive the Bonus, Mr. Grimstad must remain continuously employed with the Company through the date of the change of control; provided, however, that in the event Mr. Grimstad terminates his employment for good reason or the Company terminates his employment other than for misconduct, Mr. Grimstad will be entitled to receive the Bonus provided the change of control occurs on or before January 3, 2025. Compensation expense related to the bonus agreement will not be recognized until such time that is probable that the performance goal will be achieved.

11. Stockholders' Equity

Common Stock

At September 30, 2021 and December 31, 2020, there were 249,000,000 shares of common stock authorized and 126,616,410 and 111,259,037 shares of common stock issued and outstanding, respectively, with a par value of $0.0001. The Company did not hold any shares as treasury shares as of September 30, 2021 or December 31, 2020. The Company's common stockholders are entitled to one vote per share.

At-the-Market Offering

On August 30, 2021, the Company entered into a second amended and restated open market sale agreement with respect to an at-the-market offering program (the "ATM Program") under which the Company may offer and sell, from time to time at its sole discretion through Jefferies as its sales agent, shares of its common stock, having an aggregate offering price of up to $30,000. The issuance and sale of shares by the Company under the agreement are pursuant to the Company's effective registration statement on Form S-3 which was filed on April 4, 2019. During the three months ended September 30, 2021, the Company sold 6,683,823 shares of common stock under the ATM Program at an average price of $1.20 per share, for gross proceeds of $8,035. Net proceeds, after deducting sales commissions, totaled $7,900.

Preferred Stock

At September 30, 2021 and December 31, 2020, the Company was authorized to issue 1,000,000 shares of preferred stock ($0.0001 par value per share). There were no issued or outstanding preferred shares as of September 30, 2021 or December 31, 2020.

Notes

The Company has outstanding Notes which are convertible into shares of the Company's common stock at a rate of $10.05 per share. See *Note 7 – Debt* for additional information regarding the Notes.

Warrants

In November 2018, the Company issued to Luxor Capital warrants which are currently exercisable for 497,507 shares of the Company's common stock with a current exercise price of $10.05 per share (the "Debt Warrants"). The Debt Warrants expire on November 15, 2022 and include customary anti-dilution protection, including broad-based weighted average adjustments for certain issuances of additional shares. Additionally, holders of the Debt Warrants have customary registration rights with respect to the shares underlying the Debt Warrants.

12. Fair Value Measurements

Medical Contingency

At December 31, 2020, the Company had an outstanding medical contingency claim which was measured at fair value on a recurring basis (see *Note 9 – Commitments and Contingencies*). The long-term portion of the liability for such claim is included in the unaudited condensed consolidated balance sheets under accrued medical contingency, with the short-term portion included within other current liabilities. The medical contingency claim was measured at fair value using a method that incorporated life-expectancy assumptions, along with projected annual medical costs for each future year, adjusted for inflation. An average annual inflation rate of 3.5% was used in the development of the actuarial estimate for medical costs, based on historical medical cost inflation trends as published by the U.S. Bureau of Labor Statistics. Additionally, the measurement included factors to derive a probability-weighted average of future payments in order to reflect variations from the life-expectancy assumptions, using CDC National Vital Statistics Reports as a tool in the analysis. Projected cash flows were discounted using an interest rate consistent with the U.S. 30-year treasury yield curve rates.

During the three months ended September 30, 2021, as a result of the death of the individual associated with the Medical Contingency, there was a change in accounting estimate of the total outstanding liability. The estimated loss exposure was updated to reflect the liability for remaining unpaid medical expenses and dependent death benefits, totaling $423 as of September 30, 2021. The change in estimate of the Medical Contingency was recognized as other income in the unaudited condensed consolidated statement of operations and totaled $16,715 for the three and nine month ended September 30, 2021.

The medical contingency claim analysis represents a Level 3 measurement at December 31, 2020 as it was based on unobservable inputs reflecting the Company's assumptions used in developing the fair value estimate. The inputs used in the measurement, particularly life expectancy and projected medical costs, were sensitive inputs to the measurement and changes to either could have resulted in significantly higher or lower fair value measurements. The Company engaged third-party actuaries to assist in estimating the fair value, including future comprehensive medical care costs by utilizing historical transactional data regarding the claim. These inputs required significant judgments and estimates at the time of the valuation. The analysis used in the measurement of the remaining reserve for the medical contingency at September 30, 2021 reflects the Company's assumptions regarding unpaid medical expenses and estimated death benefits used in developing the fair value estimate and is a Level 3 measurement.

Contingent Consideration

The fair value of contingent consideration is measured at acquisition date, and at the end of each reporting period through the term of the arrangement, using the Black Scholes option-pricing model with assumptions for volatility and risk-free rate. Contingent consideration relates to the earnout provision in the Company's acquisition of the Cape Payment Companies in August 2021 and the future contingent payment based on the achievement of certain revenue targets (see *Note 3 – Business Combinations*). Expected volatility is based on a blended weighted average of the volatility rates for a number of similar publicly-traded companies. The risk-free rates are based on U.S. Treasury securities with similar maturities as the expected term of the earnout provision at the date of valuation. The fair value measurement was based on significant inputs not observable in the market and thus represent Level 3 measurements within the fair value hierarchy. These inputs required significant judgments and estimates at the time of the valuation. The Company engaged a third-party specialist to assist management in estimating the fair value of the contingent consideration obligation.

Summary by Fair Value Hierarchy

The following table presents the Company's liabilities measured at fair value on a recurring basis as of September 30, 2021 and December 31, 2020 (in thousands):

	As of September 30, 2021			
	Level 1	Level 2	Level 3	Total
Liabilities				
Accrued medical contingency	$ —	$ —	$ 423	$ 423
Contingent consideration	—	—	1,686	1,686
Total liabilities measured and recorded at fair value	**$ —**	**$ —**	**$ 2,109**	**$ 2,109**

	As of December 31, 2020			
	Level 1	Level 2	Level 3	Total
Liabilities				
Accrued medical contingency	$ —	$ —	$ 17,435	$ 17,435
Contingent consideration	—	—	—	—
Total liabilities measured and recorded at fair value	**$ —**	**$ —**	**$ 17,435**	**$ 17,435**

The Company had no assets required to be measured at fair value on a recurring basis at September 30, 2021 or December 31, 2020. Adjustments to the accrued medical contingency and contingent consideration are recognized in other expense (income) on the condensed consolidated statement of operations. There have been no transfers between levels during the periods presented in the accompanying condensed consolidated financial statements. The following table presents a reconciliation of the accrued medical contingency liability classified as a Level 3 financial instrument for the periods indicated (in thousands):

	Medical Contingency			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Balance, beginning of the period	**$ 17,182**	**$ 17,767**	**$ 17,435**	**$ 17,883**
Increases/additions	—	—	84	—
Reductions/settlements	(16,759)	(262)	(17,096)	(378)
Balance, end of the period	**$ 423**	**$ 17,505**	**$ 423**	**$ 17,505**

The following table presents a reconciliation of the contingent consideration liability classified as a Level 3 financial instrument for the three and nine months ended September 30, 2021 (in thousands):

	Contingent Consideration
Balance, beginning of the period	$ —
Increases/additions	1,686
Reductions/settlements	—
Balance, end of the period	**$ 1,686**

In addition to assets and liabilities that are recorded at fair value on a recurring basis, the Company is required to record certain assets and liabilities at fair value on a non-recurring basis. The Company generally applies fair value concepts in recording assets and liabilities acquired in business combinations and asset acquisitions (see *Note 3 – Business Combinations*).

13. Earnings Per Share Attributable to Common Stockholders

The calculation of basic and diluted income per share attributable to common stockholders for the three and nine months ended September 30, 2021 and 2020 is as follows (in thousands, except share and per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Basic income per share:				
Net income attributable to common stockholders - basic	**$ 12,250**	**$ 4,644**	**$ 2,897**	**$ 13,195**
Weighted average number of shares outstanding	119,823,181	109,181,847	115,961,454	93,763,069
Basic income per common share	**$ 0.10**	**$ 0.04**	**$ 0.02**	**$ 0.14**
Diluted income per share:				
Net income attributable to common stockholders - diluted	**$ 12,250**	**$ 4,644**	**$ 2,897**	**$ 13,195**
Weighted average number of shares outstanding	119,823,181	109,181,847	115,961,454	93,763,069
Effect of dilutive securities:				
Stock options	6,733,754	8,433,152	7,604,969	5,107,989
Restricted stock units	3,610,361	6,170,751	4,713,397	3,648,396
Warrants	—	—	—	—
Weighted average diluted shares	130,167,296	123,785,750	128,279,820	102,519,454
Diluted income per common share	**$ 0.09**	**$ 0.04**	**$ 0.02**	**$ 0.13**

The Company has outstanding Notes which are convertible into shares of the Company's common stock. See *Note 7 – Debt* for additional details on the Notes. Based on the conversion price in effect at the end of the respective periods, the Notes were convertible into 4,925,783 and 4,714,678 shares, respectively, of the Company's common stock at September 30, 2021 and 2020. During the three and nine months ended September 30, 2021 and 2020, the Company's weighted average common stock price was below the Notes conversion price for such periods. Accordingly, the shares were not considered in the dilutive earnings per share calculation.

Additionally, the following table includes securities outstanding at the end of the respective periods, which have been excluded from the fully diluted calculations because the effect on net earnings per common share would have been antidilutive:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Antidilutive shares underlying stock-based awards:				
Stock options	19,800	70,045	19,800	70,045
Restricted stock units	6,838,412	34,974	6,838,412	34,974
Warrants (1)	497,507	476,185	497,507	476,185

(1) Includes the Debt Warrants as of September 30, 2021 and 2020. See *Note 11 – Stockholders' Equity* for additional details.

14. Related-Party Transactions

In November 2018, the Company entered into the Credit Agreement, and in January 2019, the Company entered into an amendment to the Credit Agreement, with Luxor Capital and an amendment to the Convertible Notes Agreement with the Luxor Entities. In addition, Luxor Capital was issued warrants to purchase shares of the Company's common stock (see *Note 11 – Stockholders' Equity*). On each of May 21, 2019, July 15, 2020 and March 9, 2021, the Company entered into amendments to the Credit Agreement with Luxor Capital and amendments to the Convertible Notes Agreement with the Luxor Entities. Additionally, on May 1, 2020, the Company entered into a Limited Waiver and Conversion Agreement with respect to the Credit Agreement and Convertible Notes Agreement. Jonathan Green, a board member of the Company, is a partner at Luxor Capital.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the unaudited condensed consolidated financial statements and related notes thereto included elsewhere in this Quarterly Report on Form 10-Q (the "Form 10-Q") and with the audited consolidated financial statements included in the Company's 2020 Form 10-K filed with the SEC on March 8, 2021. The following discussion contains forward-looking statements that reflect future plans, estimates, beliefs and expected performance. The forward-looking statements are dependent upon events, risks and uncertainties that may be outside of our control. Our actual results could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to such differences are set forth in the section titled "Cautionary Statement Regarding Forward-Looking Statements". Dollar amounts in this discussion are expressed in thousands, except as otherwise noted.

Overview

Waitr operates an online ordering technology platform, providing delivery, carryout and dine-in options, connecting restaurants, drivers and diners in cities across the United States. Our strategy is to bring in the logistics infrastructure to underserved populations of restaurants, grocery stores and other merchants and establish strong market presence or leadership positions in the markets in which we operate. Our business has been built with a restaurant-first philosophy by providing differentiated and brand additive services to the restaurants on the Platforms. Our Platforms allow consumers to browse local restaurants and menus, track order and delivery status, and securely store previous orders for ease of use and convenience. These merchants benefit from the online Platforms through increased exposure to consumers for expanded business in the delivery market and carryout sales.

On March 11, 2021, we completed the acquisition of Delivery Dudes, a third-party delivery business primarily serving the South Florida market. On August 25, 2021, we completed the acquisition of the Cape Payment Companies, which are in the business of facilitating the entry into merchant agreements by and between merchants and payment processing solution providers. See "*Liquidity and Capital Resources*" and Part I, Item 1, *Note 3 – Business Combinations* for additional details on the Company's 2021 acquisitions.

We expanded the Company's market presence in the on-demand delivery service sector during the six months ended June 30, 2021 through the acquisition of Delivery Dudes and the launch of new markets in numerous cities and towns and added a variety of national brands to the Platforms. While we continue to strengthen our market presence in the on-demand delivery sector, we are also focused on further supplementing our offerings and diversifying the Company beyond third-party food delivery. Our acquisition of the Cape Payment Companies during the three months ended September 30, 2021 was an important step in pursuing our overall growth strategy, positioning the Company to offer a full suite of payment processing services to its current base of restaurants and other future merchants. Additionally, we are continuing to make progress on our comprehensive rebranding initiative to change our corporate name and visual identity, with the goal of better unifying our current and future service offerings.

At September 30, 2021, we had over 25,000 restaurants, in over 1,000 cities, on the Platforms. Average Daily Orders for the three months ended September 30, 2021 and 2020 were approximately 30,563 and 39,880, respectively, and revenue was $43,448 and $52,734, respectively. For the nine months ended September 30, 2021 and 2020, Average Daily Orders were 35,565 and 40,563, respectively, and revenue was $143,545 and $157,483, respectively.

Impact of COVID-19 on our Business

We have thus far been able to operate effectively during the COVID-19 pandemic. In response to economic hardships experienced during the COVID-19 pandemic, the U.S. federal government rolled out stimulus payments in the first quarter of 2021 which we believe had a positive impact on order volumes during such period. However, we also believe the stimulus payments resulted in increased driver labor costs as we were faced with challenges in maintaining an appropriate level of driver supply. During the second and third quarters of 2021, we believe the impact of the stimulus payments on our order volumes began to decrease.

While the widespread rollout of vaccines is leading to increased confidence that the impacts of the pandemic may be stabilizing, the spread of certain COVID variants and cases rising in areas with low vaccination rates provide continued uncertainty as to the potential short and long-term impacts of the pandemic on the global economy and on the Company's business, in particular. There remains uncertainty as to whether or not the pandemic will continue to impact diner behavior, and if so, in what manner.

To the extent that the COVID-19 pandemic adversely impacts the Company's business, results of operations, liquidity or financial condition, it may also have the effect of heightening many of the other risks described in the risk factors in the Company's 2020 Form 10-K and this quarterly report on Form 10-Q for the three months ended September 30, 2021. Management continues to monitor the impact of the COVID-19 outbreak and the possible effects on its financial position, liquidity, operations, industry and workforce.

Significant Accounting Policies and Critical Accounting Estimates

The preparation of financial statements in accordance with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period, along with related disclosures. We regularly assess these estimates and record changes to estimates in the period in which they become known. We base our estimates on historical experience and various other assumptions believed to be reasonable under the circumstances. Changes in the economic environment, financial markets, and any other parameters used in determining these estimates could cause actual results to differ from estimates. Significant estimates and judgements relied upon in preparing these condensed consolidated financial statements affect the following items:

- incurred loss estimates under our insurance policies with large deductibles or retention levels;
- loss exposure related to claims such as the Medical Contingency;
- income taxes;
- useful lives of tangible and intangible assets;
- equity compensation;
- contingencies;
- goodwill and other intangible assets, including the recoverability of intangible assets with finite lives and other long-lived assets; and
- fair value of assets acquired, liabilities assumed and contingent consideration as part of a business combination.

Other than the changes disclosed in Part I, Item 1, *Note 2 – Basis of Presentation and Summary of Significant Accounting Policies* to our unaudited condensed consolidated financial statements in this Form 10-Q, there have been no material changes to our significant accounting policies and estimates described in the 2020 Form 10-K.

New Accounting Pronouncements and Pending Accounting Standards

See Part I, Item 1, *Note 2 – Basis of Presentation and Summary of Significant Accounting Policies* for a description of accounting standards adopted during the nine months ended September 30, 2021. Also described in Note 2 are pending standards and their estimated effect on our unaudited condensed consolidated financial statements.

Through year-end 2020, we qualified as an “emerging growth company” pursuant to the provisions of the JOBS Act. As an emerging growth company, we were able to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not “emerging growth companies”, including not being required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act. Effective January 1, 2021, we are no longer an emerging growth company. Accordingly, for fiscal year 2021, we will be required to include an opinion from our independent registered public accounting firm on the effectiveness of our internal controls over financial reporting.

Factors Affecting the Comparability of Our Results of Operations

2021 Acquisitions. The Delivery Dudes Acquisition and Cape Payment Acquisition were considered business combinations in accordance with ASC 805, and have been accounted for using the acquisition method. Under the acquisition method of accounting, total purchase consideration, acquired assets, assumed liabilities and contingent consideration are recorded based on their estimated fair values on the acquisition date. For each of these acquisitions, the excess of the fair value of purchase consideration over the fair value of the assets less liabilities acquired (and contingent consideration when applicable) has been recorded as goodwill on our unaudited condensed consolidated balance sheet as of September 30, 2021. The results of operations of Delivery Dudes and Cape Payment Companies are included in our unaudited condensed consolidated financial statements beginning on the acquisition dates, March 11, 2021 and August 25, 2021, respectively.

In connection with the acquisitions, we incurred direct and incremental costs during the three and nine months ended September 30, 2021 of approximately $171 and $840, respectively, consisting of legal and professional fees, which are included in general and administrative expenses in the unaudited condensed consolidated statement of operations in such periods.

Changes in Fee Structure. Our fee structure has changed at various times since our inception. We continue to review and update our current rate structure, as necessary, as we look to offer new and enhanced value-adding services to our restaurant partners. Any changes to our fee structure (whether externally to comply with governmental imposed caps or as a result of internal decision-making) could affect the comparability of our results of operations from period to period.

Seasonality and Holidays. Our business tends to follow restaurant closure and diner behavior patterns with respect to demand of our service offering. In many of our markets, we have historically experienced variations in order frequency as a result of weather patterns, university summer breaks and other vacation periods. In addition, a significant number of restaurants tend to close on certain major holidays, including Thanksgiving, Christmas Eve and Christmas Day, among others. Further, diner activity may be impacted by unusually cold, rainy, or warm weather. Cold weather and rain typically drive increases in order volume, while unusually warm or

sunny weather typically drives decreases in orders. Furthermore, severe weather-related events such as snowstorms, ice storms, hurricanes and tropical storms have adverse effects on order volume, particularly if they cause property damage or utility interruptions to our restaurant partners. The COVID-19 pandemic, as well as the federal government's responses thereto, have had an impact on our typical seasonality trends and could impact future periods.

Acquisition Pipeline. We continue to maintain and evaluate an active pipeline of potential acquisition targets and may pursue acquisitions in the future, both in the restaurant delivery space as well as other verticals, such as payments. These potential business acquisitions may impact the comparability of our results in future periods relative to prior periods.

Key Factors Affecting Our Performance

Efficient Market Expansion and Penetration. Revenue growth and any corresponding improved cash flow and profitability is dependent on successful restaurant, diner and driver penetration of our markets and achieving scale in current and future markets. Failure in achieving this scale could adversely affect our working capital, which in turn, could slow our growth plans.

We typically target markets that we believe could achieve sustainable positive operating cash flows and profits, improve efficiency, and appropriately leverage the scale of our advertising, marketing, research and development, and other corporate resources. Our financial condition, cash flows, and results of operations depend, in significant part, on our ability to achieve and sustain our target profitability thresholds in our markets.

Waitr's Restaurant, Diner and Driver Network. A significant part of our strategy is our ability to successfully expand our network of restaurants, diners and drivers using the Platforms. If we fail to retain existing or add new restaurants, diners and drivers, our revenue and overall financial results may be adversely affected.

Key Business Metrics

Defined below are the key business metrics that we use to analyze our business performance, determine financial forecasts, and help develop long-term strategic plans:

Active Diners. We count Active Diners as the number of diner accounts from which an order has been successfully completed through the Platforms during the past twelve months (as of the end of the relevant period) and consider Active Diners an important metric because the number of diners using our Platforms is a key revenue driver and a valuable measure of the size of our engaged diner base.

Average Daily Orders. We calculate Average Daily Orders as the number of completed orders during the period divided by the number of days in that period, including holidays. Average Daily Orders is an important metric for us because the number of orders processed on our Platforms is a key revenue driver and, in conjunction with the number of Active Diners, a valuable measure of diner activity on our Platforms for a given period.

Gross Food Sales. We calculate Gross Food Sales as the total food and beverage sales, sales taxes, gratuities, and diner fees processed through the Platforms during a given period. Gross Food Sales are different than the order value upon which we charge our fee to restaurants, which excludes sales taxes, gratuities and diner fees. Gratuities, which are not included in our net revenue, are determined by diners and may vary from order to order. Gross Food Sales is an important metric for us because the total volume of food sales transacted through our Platforms is a key revenue driver.

Average Order Size. We calculate Average Order Size as Gross Food Sales for a given period divided by the number of completed orders during the same period. Average Order Size is an important metric for us because the average value of gross food sales on our Platforms is a key revenue driver.

Key Business Metrics(1)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Active Diners (as of period end)	1,769,999	2,005,760	1,769,999	2,005,760
Average Daily Orders	30,563	39,880	35,565	40,563
Gross Food Sales (dollars in thousands)	$ 128,534	$ 153,532	$ 433,553	$ 462,089
Average Order Size (in dollars)	$ 45.71	$ 41.85	$ 44.65	$ 41.58

(1) The key business metrics include the operations of Delivery Dudes beginning on the acquisition date, March 11, 2021.

Basis of Presentation

Revenue

We generate revenue primarily when diners place an order on one of the Platforms. We recognize revenue from diner orders when orders are delivered. Our revenue consists primarily of net Transaction Fees. Additionally, effective August 25, 2021, we generate revenue by facilitating the entry into merchant agreements by and between merchants and payment processing solution providers.

Cost and Expenses:

Operations and Support. Operations and support expense consists primarily of salaries, benefits, stock-based compensation, and bonuses for employees engaged in operations and customer service, as well as market managers, restaurant onboarding, and driver logistics personnel, and payments to independent contractor drivers for delivery services. Operations and support expense also includes payment processing costs incurred on customer orders and the cost of software and related services providing support for diners, restaurants and drivers.

Sales and Marketing. Sales and marketing expense consists primarily of salaries, commissions, benefits, stock-based compensation and bonuses for personnel supporting sales and marketing efforts, including restaurant business development managers, marketing employees and contractors, and third-party marketing expenses such as social media and search engine marketing, online display, sponsorships and print marketing.

Research and Development. Research and development expense consists primarily of salaries, benefits, stock-based compensation and bonuses for employees and contractors engaged in the design, development, maintenance and testing of the Platforms. This expense also includes such items as software subscriptions that are necessary for the upkeep and maintenance of the Platforms.

General and Administrative. General and administrative expense consists primarily of salaries, benefits, stock-based compensation and bonuses for executive, finance and accounting, human resources and other administrative employees as well as third-party legal, accounting, and other professional services, insurance (including workers' compensation, auto liability and general liability), travel, facilities rent, and other corporate overhead costs.

Depreciation and Amortization. Depreciation and amortization expense consists primarily of amortization of capitalized costs for software development, trademarks and customer relationships and depreciation of leasehold improvements and equipment, primarily tablets deployed in restaurants. We do not allocate depreciation and amortization expense to other line items.

Other Expenses (Income) and Losses (Gains), Net. Other expenses (income) and losses (gains), net, includes interest expense on outstanding debt, as well as any other items not considered to be incurred in the normal operations of the business, including the change in estimate for the Medical Contingency.

Results of Operations

The following table sets forth our results of operations for the periods indicated, with line items presented in thousands of dollars and as a percentage of our revenue:

(in thousands, except percentages(1))	Three Months Ended September 30, 2021	% of Revenue	2020	% of Revenue	Nine Months Ended September 30, 2021	% of Revenue	2020	% of Revenue
Revenue	**$ 43,448**	**100 %**	**$ 52,734**	**100 %**	**$ 143,545**	**100 %**	**$ 157,483**	**100 %**
Costs and expenses:								
Operations and support	25,043	58%	27,409	52%	86,654	60%	84,321	54%
Sales and marketing	4,965	11%	3,288	6%	13,481	9%	8,854	6%
Research and development	1,310	3%	820	2%	3,163	2%	3,457	2%
General and administrative	10,843	25%	11,380	22%	33,534	23%	32,252	20%
Depreciation and amortization	3,070	7%	2,103	4%	8,952	6%	6,242	4%
Intangible and other asset impairments	186	0%	—	0%	186	0%	29	0%
Loss on disposal of assets	11	0%	4	0%	170	0%	15	0%
Total costs and expenses	**45,428**	105%	**45,004**	85%	**146,140**	102%	**135,170**	86%
Income (loss) from operations	**(1,980)**	(5%)	**7,730**	15%	**(2,595)**	(2%)	**22,313**	14%
Other expenses (income) and losses (gains), net:								
Interest expense	1,751	4%	2,117	4%	5,333	4%	7,521	5%
Interest income	—	0%	(14)	0%	—	0%	(95)	0%
Other (income) expense	(16,006)	(37%)	965	2%	(10,907)	(8%)	1,640	1%
Net income before income taxes	**12,275**	28%	**4,662**	9%	**2,979**	2%	**13,247**	8%
Income tax expense	25	0%	18	0%	82	0%	52	0%
Net income	**$ 12,250**	28%	**$ 4,644**	9%	**$ 2,897**	2%	**$ 13,195**	8%

(1) Percentages may not foot due to rounding.

The following section includes a discussion of our results of operations for the three and nine months ended September 30, 2021 and the three and nine months ended September 30, 2020. The results of operations of Delivery Dudes and Cape Payment Companies are included in our unaudited condensed consolidated financial statements beginning on the acquisition dates of March 11, 2021 and August 25, 2021, respectively (see Part I, Item 1, *Note 3 – Business Combinations*).

Revenue

	Three Months Ended September 30, 2021	2020	Percentage Change	Nine Months Ended September 30, 2021	2020	Percentage Change
	(dollars in thousands)			(dollars in thousands)		
Revenue	$ 43,448	$ 52,734	(18%)	$ 143,545	$ 157,483	(9%)

Revenue decreased for the three and nine months ended September 30, 2021 compared to the three and nine months ended September 30, 2020, primarily as a result of decreased order volumes. Partially offsetting the impact of decreased order volumes was an increase in the Average Order Size in such periods as well as revenue from the Cape Payment Companies and Delivery Dudes acquisitions, beginning on their respective acquisition dates. The Average Order Size was $45.71 for the three months ended September 30, 2021, compared to $41.85 for the three months ended September 30, 2020, an improvement of 9%. The Average Order Size increased to $44.65 for the nine months ended September 30, 2021, from $41.58 for the nine months ended September 30, 2020, an improvement of 7%.

Operations and Support

	Three Months Ended September 30, 2021	2020	Percentage Change	Nine Months Ended September 30, 2021	2020	Percentage Change
	(dollars in thousands)			(dollars in thousands)		
Operations and support	$ 25,043	$ 27,409	(9%)	$ 86,654	$ 84,321	3%
As a percentage of revenue	58%	52%		60%	54%	

Operations and support expenses decreased in dollar terms in the three months ended September 30, 2021 compared to the three months ended September 30, 2020, primarily due to lower driver operations costs. During the nine months ended September 30, 2021, operations and support expenses increased slightly from the nine months ended September 30, 2020, primarily due to the Company opening more markets and serving more markets in the 2021 period as compared to 2020 as well as the inclusion of the Delivery Dudes operations in our consolidated results. As a percentage of revenue, operations and support expenses were higher in the three and nine months ended September 30, 2021 compared to the 2020 periods as we strategically invested in our customer, driver and restaurant support operations.

Sales and Marketing

	Three Months Ended September 30,		Percentage Change	Nine Months Ended September 30,		Percentage Change
	2021	2020		2021	2020	
	(dollars in thousands)			(dollars in thousands)		
Sales and marketing	$ 4,965	$ 3,288	51%	$ 13,481	$ 8,854	52%
As a percentage of revenue	11%	6%		9%	6%	

Sales and marketing expense increased in dollar terms and as a percentage of revenue in the three and nine months ended September 30, 2021 compared to the three and nine months ended September 30, 2020, primarily attributable to increased digital advertising as we further invested in market expansion as well as solidifying our presence in existing territories. Additionally, sales and marketing expense during the three months ended September 30, 2021 includes referral agent commission expense related to the Cape Payment Companies acquisition.

Research and Development

	Three Months Ended September 30,		Percentage Change	Nine Months Ended September 30,		Percentage Change
	2021	2020		2021	2020	
	(dollars in thousands)			(dollars in thousands)		
Research and development	$ 1,310	$ 820	60%	$ 3,163	$ 3,457	(9%)
As a percentage of revenue	3%	2%		2%	2%	

Research and development expense increased in dollar terms in the three months ended September 30, 2021, compared to the three months ended September 30, 2020, primarily due to the hiring of product and engineering personnel to further refine our Platforms. During the nine months ended September 30, 2021, research and development expense decreased in dollar terms compared to the nine months ended September 30, 2020, primarily due to the capitalization of increased software development costs as further product features and functionality were incorporated into the Platforms. Research and development expense as a percentage of revenue remained relatively flat for the three and nine months ended September 30, 2021 in relation to the comparable 2020 periods.

General and Administrative

	Three Months Ended September 30,		Percentage Change	Nine Months Ended September 30,		Percentage Change
	2021	2020		2021	2020	
	(dollars in thousands)			(dollars in thousands)		
General and administrative	$ 10,843	$ 11,380	(5%)	$ 33,534	$ 32,252	4%
As a percentage of revenue	25%	22%		23%	20%	

General and administrative expense decreased in dollar terms in the three months ended September 30, 2021, compared to the three months ended September 30, 2020, primarily due to decreased insurance expense, partially offset by increased recruiting costs. During the nine months ended September 30, 2021, general and administrative expense increased in dollar terms compared to the nine months ended September 30, 2020, primarily due to increased stock-based compensation expense and recruiting costs, partially offset by decreased insurance expense and payroll processing fees. As a percentage of revenue, general and administrative expenses increased slightly in the 2021 periods compared to the 2020 periods.

Depreciation and Amortization

	Three Months Ended September 30,		Percentage Change	Nine Months Ended September 30,		Percentage Change
	2021	2020		2021	2020	
	(dollars in thousands)			(dollars in thousands)		
Depreciation and amortization	$ 3,070	$ 2,103	46%	$ 8,952	$ 6,242	43%
As a percentage of revenue	7%	4%		6%	4%	

Depreciation and amortization expense increased in dollar terms and as a percentage of revenue in the three and nine months ended September 30, 2021 compared to the three and nine months ended September 30, 2020, driven by an increase in depreciation expense related to computer tablets for restaurants on the Platforms and amortization expense on intangible assets acquired in the Delivery Dudes Acquisition and Cape Payment Companies Acquisition.

Other Expenses (Income) and Losses (Gains), Net

	Three Months Ended September 30,		Percentage Change	Nine Months Ended September 30,		Percentage Change
	2021	2020		2021	2020	
	(dollars in thousands)			(dollars in thousands)		
Other expenses (income) and losses (gains), net	$ (14,255)	$ 3,068	N/A	$ (5,574)	$ 9,066	N/A
As a percentage of revenue	-33%	6%		-4%	6%	

Other expenses (income) and losses (gains), net for the three months ended September 30, 2021 primarily consisted of $16,715 of income related to a change in estimate of the Medical Contingency (see *Note 9 – Commitments and Contingent Liabilities*) and $1,694 of interest expense associated with the Term Loan and Notes. For the three months ended September 30, 2020, other expenses (income) and losses (gains), net primarily consisted of $2,088 of interest expense associated with the Term Loan and Notes and a $1,023 stock-based compensation expense accrual related to a legal contingency.

For the nine months ended September 30, 2021, other expenses (income) and losses (gains), net primarily consisted of $16,715 of income from the change in estimate of the Medical Contingency, $4,700 of other expense for a legal settlement and $5,214 of interest expense associated with the Term Loan and Notes. For the nine months ended September 30, 2020, other expenses (income) and losses (gains), net primarily consisted of $7,413 of interest expense associated with the Term Loan and Notes. Interest expense decreased in 2021 primarily due to a reduction in outstanding debt, as well as a reduction of the interest rates by 200 basis points on the Term Loan and Notes for a one-year period beginning on August 3, 2020, in connection with amendments to the loan agreements governing the Term Loan and Notes. Effective August 3, 2021, the interest rates reverted back to the rates in effect prior to the amendments.

Income Tax Expense

Income tax expense for the three months ended September 30, 2021 and 2020 was $25 and $18, respectively, and $82 and $52 for the nine months ended September 30, 2021 and 2020, respectively. The Company's income tax expense is entirely related to state taxes in various jurisdictions. We have historically generated net operating losses; therefore, a valuation allowance has been recorded on our net deferred tax assets.

Liquidity and Capital Resources

Overview

As of September 30, 2021, we had cash on hand of $43,502. Our primary sources of liquidity have recently been cash flow from operations and proceeds from the issuance of stock in fiscal 2021 and 2020.

During the nine months ended September 30, 2021, we made investments in our business with numerous new market launches and the Delivery Dudes Acquisition, expanding our scope of delivery in multiple small and medium sized markets. Additionally, in August 2021, we acquired the Cape Payment Companies, a key step in pursuing our overall growth strategy to offer a full suite of payment processing services to our current base of merchants. The Delivery Dudes Acquisition included $11,500 in cash, subject to certain purchase price adjustments, and 3,562,577 shares of the Company's common stock. The Cape Payment Acquisition included $12,000 in cash, subject to certain purchase price adjustments, 2,564,103 shares of the Company's common stock and an earnout provision valued at $1,686 as of the acquisition date.

In August 2021, we entered into a second amended and restated open market sale agreement with respect to our ATM Program, pursuant to which the Company may offer and sell shares of its common stock having an aggregate offering price of up to $30,000 (see Part I, Item 1, *Note 11 – Stockholders' Equity*). We sold 6,683,823 shares of common stock during the three months ended September 30, 2021 for net proceeds of approximately $7,900. As of November 2, 2021, we have approximately $21,965 available under the ATM Program.

Pursuant to an amendment to the Credit Agreement in the first quarter of 2021, the Company made a $15,000 prepayment on the Term Loan on March 16, 2021. The aggregate principal amount of outstanding long-term debt totaled $84,511 as of September 30, 2021, consisting of $35,007 for the Term Loan and $49,504 of Notes. As of September 30, 2021, the Company had $2,331 of outstanding short-term loans for insurance premium financing.

We currently expect that our cash on hand and estimated cash flow from operations will be sufficient to meet our working capital needs for at least the next twelve months; however, there can be no assurance that we will generate cash flow at the levels we anticipate. We may use cash on hand to repay additional debt or to acquire or invest in complementary businesses, products, services and technologies. We continually evaluate additional opportunities to strengthen our liquidity position, fund growth initiatives and/or combine with other businesses by issuing equity or equity-linked securities (in both public or private offerings) and/or incurring

additional debt. However, market conditions, future financial performance or other factors may make it difficult for us to access sources of capital, on favorable terms or at all, should we determine in the future to raise additional funds.

We are continuously reviewing our liquidity and anticipated working capital needs, particularly in light of the uncertainty created by the COVID-19 pandemic. Thus far, we have been able to operate effectively during the pandemic, however, the potential impacts and duration of the COVID-19 pandemic (including those related to variants) on the economy and on our business, in particular, is difficult to predict.

Capital Expenditures

Our main capital expenditures relate to the purchase of tablets for restaurants on the Platforms and investments in the development of the Platforms, which are expected to increase as we continue to grow our business. Our future capital requirements and the adequacy of available funds will depend on many factors, including those set forth under “Risk Factors” in our 2020 Form 10-K and subsequent filings with the SEC, including this quarterly report on Form 10-Q for the three months ended September 30, 2021.

Cash Flow

The following table sets forth our summary cash flow information for the periods indicated:

	Nine Months Ended September 30,	
(in thousands)	**2021**	**2020**
Net cash (used in) provided by operating activities	$ (575)	$ 29,586
Net cash used in investing activities	(32,563)	(3,629)
Net cash (used in) provided by financing activities	(8,066)	21,862

Cash Flows (Used in) Provided by Operating Activities

For the nine months ended September 30, 2021, net cash used in operating activities was $575, compared to net cash provided by operating activities of $29,586 for the nine months ended September 30, 2020. The decrease in cash flows from operating activities in the nine months ended September 30, 2021 from the comparable 2020 period was primarily driven by a decrease in revenue and increased sales and marketing expenses, partially offset by changes in operating assets and liabilities. During the nine months ended September 30, 2021, the net change in operating assets and liabilities decreased net cash provided by operating activities by $21,421, primarily consisting of $16,715 related to the change in estimate of the Medical Contingency and a decrease in accrued payroll of $3,389. During the nine months ended September 30, 2020, the net change in operating assets and liabilities increased net cash provided by operating activities by $1,505.

Cash Flows Used in Investing Activities

For the nine months ended September 30, 2021, net cash used in investing activities consisted primarily of $25,435 for the acquisitions of Delivery Dudes and Cape Payment Companies and related intangible assets, and $6,432 of costs for internally developed software. For the nine months ended September 30, 2020, net cash used in investing activities consisted primarily of $2,387 of costs for internally developed software.

Cash Flows (Used in) Provided by Financing Activities

For the nine months ended September 30, 2021, net cash used in financing activities consisted primarily of a $14,472 principal prepayment on the Term Loan and $5,605 of payments on short-term loans for insurance premium financing, partially offset by $5,209 of proceeds from a short-term loan for insurance financing and $7,900 of net proceeds from the sale of common stock under the Company’s ATM Program. For the nine months ended September 30, 2020, net cash provided by financing activities included net proceeds from the issuance of common stock of $47,574 and $1,906 of proceeds from short-term loans for insurance premium financing, less $4,336 of payments on short-term loans for insurance premium financing.

Off-Balance Sheet Arrangements

We did not have any off-balance sheet arrangements as of September 30, 2021.

Cautionary Statement Regarding Forward-Looking Statements

This Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Exchange Act. All statements, other than statements of historical or current

fact, that reflect future plans, estimates, beliefs or expected performance are forward-looking statements. In some cases, you can identify forward-looking statements because they are preceded by, followed by or include words such as “may,” “can,” “should,” “will,” “estimate,” “plan,” “project,” “forecast,” “intend,” “expect,” “anticipate,” “believe,” “seek,” “target” or similar expressions. These forward-looking statements are based on information available as of the date of this Form 10-Q and our management’s current expectations, forecasts and assumptions, and involve a number of judgments, risks and uncertainties, including the following factors, in addition to the factors discussed elsewhere in this Form 10-Q, and the factors discussed in our 2020 Form 10-K and subsequent filings with the SEC (Part I, Item 1A, *Risk Factors*):

Operational Risks

- failure to retain existing diners or add new diners or our diners decreasing their number of orders or order sizes on the Platforms;
- declines in our delivery service levels or lack of increases in business for restaurants;
- loss of restaurants on the Platforms, including due to changes in our fee structure;
- inability to sustain profitability in the future;
- risks related to our relationships with the independent contractor drivers, including shortages of available drivers, loss of independent contractor drivers, adverse conditions impacting independent contractor drivers, and possible increases in driver compensation;
- inability to maintain and enhance our brands, including our comprehensive rebranding initiative to change our corporate name and visual identity, or occurrence of events that damage our reputation and brands, including unfavorable media coverage;
- seasonality and the impact of inclement weather, including major hurricanes, tropical cyclones, major snow and/or ice storms in areas not accustomed to them and other instances of severe weather and other natural phenomena;
- inability to manage growth and meet demand;
- inability to successfully improve the experience of restaurants and diners in a cost-effective manner;
- changes in our products or to operating systems, hardware, networks or standards that our operations depend on;
- dependence of our business on our ability to maintain and scale our technical infrastructure;
- personal data, internet security breaches or loss of data provided by diners or restaurants on our Platforms;
- inability to comply with applicable law or standards if we become a payment processor at some point in the future;
- risks related to the credit card and debit card payments we accept;
- reliance on third-party vendors to provide products and services;
- substantial competition in technology innovation and distribution and inability to continue to innovate and provide technology desirable to diners and restaurants;
- failure to pursue and successfully make additional acquisitions;
- failure to comply with covenants in the agreements governing our debt;
- additional impairments of the carrying amounts of goodwill or other indefinite-lived assets;
- dependence on search engines, display advertising, social media, email, content-based online advertising and other online sources to attract diners to the Platforms;
- loss of senior management or key operating personnel and dependence on skilled personnel to grow and operate our business;
- inability to successfully integrate and maintain acquired businesses;
- failure to protect our intellectual property;
- patent lawsuits and other intellectual property rights claims;
- potential liability and expenses for existing and future legal claims, including claims that may exceed insurance coverage or are not insured against;
- our use of open source software;
- insufficient capital to pursue business objectives and respond to business opportunities, challenges or unforeseen circumstances;
- unionization of our employees, the magnitude of which increases if our independent contractor drivers were ever reclassified as employees; and
- failure to maintain an effective system of disclosure controls and internal control over financial reporting.

Industry Risks

- the highly competitive and fragmented nature of our industry;
- dependence on discretionary spending patterns in the areas in which the restaurants on our Platforms operate and in the economy at large;
- general economic and business risks affecting our industry that are largely beyond our control;
- the COVID-19 pandemic, or a similar public health threat that could significantly affect our business, financial condition and results of operations;

- implementation of fee caps by jurisdictions in areas where we operate;
- failure of restaurants in our networks to maintain their service levels;
- slower than anticipated growth in the use of the Internet via websites, mobile devices and other platforms;
- federal and state laws and regulations regarding privacy, data protection, and other matters affecting our business;
- the potential for increased misclassification claims following the change to the U.S. presidential administration;
- risks relating to our relationships with the independent contractor drivers, including shortages of available drivers and possible increases in driver compensation;
- failure to continue to meet all applicable Nasdaq listing requirements and risks relating to the consequent delisting of our common stock from Nasdaq, which could adversely affect the market liquidity of our common stock and could decrease the market price of our common stock significantly; and
- risks related to the cannabis industry with respect to the business operations of the Cape Payment Companies.

These risks and uncertainties may be outside of our control. Forward-looking statements should not be relied upon as representing our views as of any subsequent date. We do not undertake any obligation to update forward-looking statements to reflect events or circumstances after the date they were made, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. Our actual results could differ materially from those discussed in these forward-looking statements.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are exposed to interest rate risk and certain other market risks in the ordinary course of our business.

Interest Rate Risk

As of September 30, 2021, we had outstanding interest-bearing long-term debt totaling $84,511, consisting of the Term Loan in the amount of $35,007 and the Notes of $49,504, both of which bear interest at fixed rates. As a result, we were not exposed to interest rate risk on our outstanding debt at September 30, 2021. If we enter into variable-rate debt in the future, we may be subject to increased sensitivity to interest rate movements.

We invest excess cash primarily in bank accounts and money market accounts, on which we earn interest. Our current investment strategy is to preserve principal and provide liquidity for our operating and market expansion needs. Since our investments have been and are expected to remain mainly short-term in nature, we do not believe that changes in interest rates would have a material effect on the fair market value of our investments or our operating results.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

As required by Rule 13a-15(b) of the Exchange Act, we have evaluated, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of the end of the period covered by this Form 10-Q. Our disclosure controls and procedures are designed to provide reasonable assurance that the information required to be disclosed by us in reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure and is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. Based upon the evaluation, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures were effective to accomplish their objectives at the reasonable assurance level as of September 30, 2021.

Changes in Internal Controls Over Financial Reporting

There has not been any change in our internal control over financial reporting that occurred during the quarter ended September 30, 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Effective January 1, 2021, we are no longer an emerging growth company. Accordingly, for fiscal year 2021, we will be required to include an opinion from our independent registered public accounting firm on the effectiveness of our internal control over financial reporting.

PART II. OTHER INFORMATION

Dollar amounts in the discussion in Part II. Other Information are expressed in thousands, except as otherwise noted.

Item 1. Legal Proceedings

In July 2016, Waiter.com, Inc. filed a lawsuit against Waitr Inc. in the United States District Court for the Western District of Louisiana, alleging trademark infringement based on Waitr's use of the "Waitr" trademark and logo, Civil Action No.: 2:16-CV-01041. The plaintiff sought injunctive relief and damages relating to Waitr's use of the "Waitr" name and logo. During the third quarter of 2020, the trial date was rescheduled to June 2021. On June 22, 2021, the Company entered into a License, Release and Settlement Agreement (the "Settlement") to settle all claims related to this lawsuit. Pursuant to the Settlement, the Company paid the plaintiff $4,700 in cash on July 1, 2021. In connection with the Settlement, we agreed to adopt a new trademark or tradename to replace the Waitr trademark and to discontinue use of the Waitr trademark in connection with the marketing, sale or provision of any web-based or mobile app-based delivery, pick-up, carry-out or dine-in services using the Waitr trademark by June 22, 2022, unless extended by eight additional months in exchange for a one-time payment of $800. The Settlement payment is included in other expense in the unaudited condensed consolidated statement of operations for the nine months ended September 30, 2021.

In April 2019, the Company was named as a defendant in a class action complaint filed by certain current and former restaurant partners, captioned *Bobby's Country Cookin', et al v. Waitr,* which is currently pending in the United States District Court for the Western District of Louisiana. Plaintiffs allege, among other things, claims for breach of contract, violation of the duty of good faith and fair dealing, and seek recovery on behalf of themselves and two separate classes. Based on the current class definitions, as many as 10,000 restaurant partners could be members of the two separate classes that the representative plaintiffs are attempting to certify. An initial mediation session is scheduled for mid-November 2021. Waitr maintains that the underlying allegations and claims lack merit, and that the classes, as pled, are incapable of certification. Waitr continues to vigorously defend the suit.

In September 2019, Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC were named as defendants in a putative class action lawsuit entitled *Walter Welch, Individually and on Behalf of all Others Similarly Situated vs. Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC.* The case was filed in the Western District of Louisiana, Lake Charles Division. In the lawsuit, the plaintiff asserts putative class action claims alleging, inter alia, that various defendants made false and misleading statements in securities filings, engaged in fraud, and violated accounting and securities rules. A similar putative class action lawsuit, entitled *Kelly Bates, Individually and on Behalf of all Others Similarly Situated vs. Christopher Meaux, David Pringle, Jeff Yurecko, Tilman J. Fertitta, Richard Handler, Waitr Holdings Inc. f/k/a Landcadia Holdings Inc., Jefferies Financial Group, Inc. and Jefferies, LLC,* was filed in that same court in November 2019. These two cases were consolidated, and an amended complaint was filed in October 2020. The Company filed a motion to dismiss in February 2021. The Court has heard oral argument on that motion, and has taken the motion under advisement. Waitr believes that this lawsuit lacks merit and that it has strong defenses to all of the claims alleged. Waitr continues to vigorously defend the suit.

In addition to the lawsuits described above, Waitr is involved in other litigation arising from the normal course of business activities, including, without limitation, labor and employment claims, allegations of infringement, misappropriation and other violations of intellectual property or other rights, lawsuits and claims involving personal injuries, physical damage and workers' compensation benefits suffered as a result of alleged conduct involving its employees, independent contractor drivers, and third-party negligence. Although Waitr believes that it maintains insurance with standard deductibles that generally covers liability for potential damages in many of these matters where coverage is available on acceptable terms (it is not maintained for claims involving intellectual property), insurance coverage is not guaranteed, often these claims are met with denial of coverage positions by the carriers, and there are limits to insurance coverage; accordingly, we could suffer material losses as a result of these claims, the denial of coverage for such claims, or damages awarded for any such claim that exceeds coverage.

Item 1A. Risk Factors

Except as set forth below, there have been no material changes with respect to Waitr's risk factors previously reported in Part I, Item 1A, of the 2020 Form 10-K.

If we fail to continue to meet all applicable Nasdaq listing requirements, and Nasdaq determines to delist our common stock, the delisting could adversely affect the market liquidity of our common stock and the market price of our common stock could decrease significantly.

Nasdaq requires that the closing bid price of our common stock does not fall below $1.00 per share for 30 consecutive business days. Historically, our common stock has experienced substantial price volatility, particularly as a result of the COVID-19 pandemic, significant fluctuations in our revenue, earnings and margins over the past few years, and variations between our actual financial

results and the published expectations of analysts. Although the trading price of our common stock is currently above $1.00 per share, the closing price of our common stock has been as low as $0.80 per share during the current fiscal year and $0.31 per share during the fiscal year ended December 31, 2020, and there can be no assurance that we will continue to meet this, or any other, requirement in the future. If we are unable to maintain compliance with this closing bid price requirement, our common stock could be delisted from Nasdaq. If this were to occur, trading of our common stock would most likely take place in an over-the-counter market for unlisted securities. An investor would likely find it less convenient to sell, or to obtain accurate quotations in seeking to buy, our common stock in an over-the-counter market, and many investors would likely not buy or sell our common stock due to difficulty in accessing over-the-counter markets, policies preventing them from trading in securities not listed on a national exchange or other reasons. In addition, as a delisted security, our common stock would be subject to SEC rules as a "penny stock," which impose additional disclosure requirements on broker-dealers. The regulations relating to penny stocks, coupled with the typically higher cost per trade to the investor of penny stocks due to factors such as broker commissions generally representing a higher percentage of the price of a penny stock than of a higher-priced stock, would further limit the ability of investors to trade in our common stock. For these reasons and others, delisting would adversely affect the liquidity, trading volume and price of our securities, causing the value of an investment in us to decrease and having an adverse effect on our business, financial condition and results of operations, including our ability to attract and retain qualified employees, to raise capital, and execute on a strategic alternative.

Our acquisition of the Cape Payment Companies, which receive certain revenue from financial institutions that provide services to customers operating in the cannabis industry, may expose us to changes related to the enforcement of federal law on cannabis.

We recently acquired substantially all of the assets of the Cape Payment Companies with respect to their business operations, and we plan to continue the Cape Payment Companies' business operations. As such, these business operations will engage in the business of providing referral services to merchants—including state licensed cannabis businesses—by connecting such businesses to money services businesses ("MSB") and/or financial institutions (e.g., payment processors, banks and credit unions) that are willing to service them. For these referral services, we are paid exclusively by the financial institutions and/or MSBs—never by the merchants—on a monthly or bi-monthly basis based on the volume of transactions the financial institutions and/or MSBs perform for the merchants. Any risks related to the cannabis industry that may adversely affect the clients and potential clients of these MSBs and/or financial institutions may, in turn, adversely affect us. Specific risks we might face include, but are not limited to, the following:

Marijuana remains illegal under United States federal law

Marijuana is a Schedule-I controlled substance under the Controlled Substances Act, or CSA, and is illegal under federal law. Under U.S. federal law, a Schedule I drug or substance has a high potential for abuse, no accepted medical use in the U.S. and a lack of safety for the use of the drug under medical supervision. The concepts of "medical cannabis" and "adult-use cannabis" do not exist under U.S. federal law. It remains illegal under federal law to grow, cultivate, sell or possess marijuana for any purpose or to assist or conspire with those who do so. Even in those states in which the use of marijuana has been authorized, its use remains a violation of federal law. Since federal law criminalizing the use of marijuana is not preempted by state laws that legalize its use, strict enforcement of federal law regarding marijuana could adversely affect our operations and financial performance.

Businesses that are not directly engaged in the cannabis industry, but that transact business with cannabis companies, also face at least a theoretical risk of being prosecuted for a violation of the CSA. In light of our receiving revenue from financial institutions and/or MSBs that provide services directly to businesses that violate the CSA—and that such business operations will continue—there is a theoretical risk that we could be prosecuted as a co-conspirator with, or for aiding and abetting, other parties' violations of the CSA.

Uncertainty of federal enforcement

On January 4, 2018, Attorney General Sessions rescinded the previously issued memoranda (the "Cole Memoranda") from the U.S. Department of Justice ("DOJ") that had de-prioritized the enforcement of federal law against marijuana users and businesses that comply with state marijuana laws, adding uncertainty to the question of how the federal government will choose to enforce federal laws regarding marijuana. Under previous administrations, the DOJ indicated that those users and suppliers of marijuana who complied with state laws, which required compliance with certain criteria, would not be prosecuted. Attorney General Sessions issued a memorandum ("Sessions Memorandum") to all United States Attorneys in which the DOJ affirmatively rescinded the previous guidance as to marijuana enforcement, calling such guidance "unnecessary." This one-page memorandum was vague in nature, stating that federal prosecutors should use established principles in setting their law enforcement priorities. Thus, federal prosecutors were free then (and continue to be free) to utilize their prosecutorial discretion to decide whether to prosecute cannabis activities despite the existence of state-level laws that may be inconsistent with federal prohibitions. No direction was given to federal prosecutors in the Sessions Memorandum as to the priority they should ascribe to such cannabis activities, and resultantly it is uncertain how active U.S. federal prosecutors will be in relation to such activities.

On November 7, 2018, Jeff Sessions resigned from his position as Attorney General. Following Mr. Sessions' resignation, William Barr was eventually appointed to the role. During his Senate confirmation hearing, Mr. Barr stated that he disagrees with

efforts by states to legalize marijuana, but would not go after marijuana companies in states that legalized it under Obama administration policies. He stated further that he would not upset settled expectations that have arisen as a result of the Cole Memoranda. Federal enforcement of cannabis-related activity remained consistent with the priorities outlined in the Cole Memoranda throughout Attorney General Barr's tenure.

In January 2021, Joseph R. Biden Jr. was sworn in as the new President of the United States. President Biden nominated federal judge Merrick Garland to serve as his Attorney General. During his confirmation hearings in the Senate on February 22, 2021, U.S. Attorney General, Merrick Garland, noted that it "does not seem to me a useful use of limited resources … to be pursuing prosecutions in states that have legalized and that are regulating the use of marijuana, either medically or otherwise." The Senate confirmed Judge Garland as Attorney General on March 10, 2021.

Regarding medical cannabis specifically, it has largely been protected against enforcement by enacted legislation from the United States Congress in the form of what is commonly called the "Rohrabacher-Blumenauer Amendment," which prevents federal prosecutors from using federal funds to impede the implementation of medical cannabis laws enacted at the state-level, subject to the United States Congress restoring such funding. Notably, this amendment has always applied to only medical cannabis programs, and has no effect on pursuit of recreational cannabis activities. The amendment has historically been passed as an amendment to omnibus appropriations bills, which by their nature expire at the end of a fiscal year or other defined term. The current omnibus appropriations bill continued the protections for the medical cannabis marketplace and its lawful participants from interference by the U.S. DOJ up and through the 2021 appropriations deadline of September 30, 2021.

In July 2020, the House of Representatives passed the "Blumenauer-McClintock-Norton-Lee amendment," to the Commerce, Justice, Science (CJS) Appropriations bill. That amendment proposed continuing the Rohrabacher-Blumenauer Amendment's protections for state medical cannabis programs and extending those protections to include recreational programs in states where recreational cannabis is legal. The amendment was not included in the final spending bill, so at this time the protections afforded by the Rohrabacher-Blumenauer Amendment apply only to medical cannabis programs.

Should the Rohrabacher-Blumenauer Amendment language not be included in the Fiscal Year 2022 appropriations package, there can be no assurance that the federal government will not seek to prosecute cases involving medical cannabis businesses that are otherwise compliant with state law.

Unless and until the United States Congress amends the CSA with respect to medical and/or adult-use cannabis (and as to the timing or scope of any such potential amendments there can be no assurance), there is a risk that U.S. federal authorities may choose to enforce current federal law that criminalizes cannabis. If the federal government begins to enforce federal laws relating to cannabis in states where the sale and use of cannabis is currently legal, or if existing applicable state laws are repealed or curtailed, our business, results of operations, financial condition and prospects would be materially adversely affected.

Such potential proceedings could involve significant restrictions being imposed upon us, while diverting the attention of key executives. Such proceedings could have a material adverse effect on us, as well as on our reputation, even if such proceedings were concluded successfully in our favor. In the extreme case, such proceedings could ultimately involve the prosecution of our key executives or the seizure of corporate assets; however as of the date hereof, we believe that proceedings of this nature are remote. Moreover, violations of any federal laws and regulations may also result in significant fines, penalties, administrative sanctions, convictions or settlements arising from civil proceedings conducted by either the federal government or private citizens, or criminal charges, including, but not limited to, disgorgement of profits, cessation of business activities or divestiture. This could have a material adverse effect on us, including our reputation and ability to conduct business, our financial position, operating results, profitability or liquidity. In addition, it is difficult for us to estimate the time or resources that would be needed for the investigation of any such matters or its final resolution because, in part, the time and resources that may be needed are dependent on the nature and extent of any information requested by the applicable authorities involved, and such time or resources could be substantial.

Banking laws and regulations could limit access to banking services and expose us to risk

Our receipt of payments from third-party financial institutions and/or MSBs providing services for customers engaged in state-legal cannabis operations could also subject those institutions to the consequences of a variety of federal laws and regulations that involve money laundering, financial record keeping and proceeds of crime, including the Bank Secrecy Act ("BSA"), as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) and any related or similar rules, regulations or guidelines, issued, administered or enforced by the federal government.

By receiving payments from these third party financial institutions and/or MSBs based on revenues derived by those institutions from federally illegal cannabis businesses, we arguably are "indirectly" obtaining property derived from unlawful activity. Accordingly, prosecutors could argue that we violate federal anti-money laundering statutes ("MLCA") in the course of providing services to cannabis-related businesses.

In the event that any of our operations, or any proceeds thereof, any dividends or distributions therefrom, or any profits or revenues accruing from such operations in the U.S. were found to be in violation of money laundering legislation or otherwise, such transactions may be viewed as proceeds of crime under one or more of the statutes noted above or any other applicable legislation. This could restrict or otherwise jeopardize our ability to declare or pay dividends or effect other distributions.

Further, banks often refuse to provide banking services to businesses involved in the cannabis industry due to the present state of federal laws and regulations governing financial institutions. Additionally, some courts have denied marijuana-related businesses bankruptcy protection, thus, making it very difficult for lenders to recoup their investments, which may limit the willingness of banks to lend to us. Accordingly, we may experience difficulties in obtaining and maintaining regular banking and financial services because of the activities of their clients, which may in turn adversely affect our business.

Regarding the BSA, specifically, the Department of the Treasury, Financial Crimes Enforcement Network, has not rescinded the “FinCEN Memo” dated February 14, 2014. This guidance includes burdensome due diligence expectations and reporting requirements, and does not provide any safe harbors or legal defenses from examination or regulatory or criminal enforcement actions by the U.S. DOJ, FinCEN or other federal regulators. Thus, many banks and other financial institutions in the United States choose not to provide banking services to cannabis-related businesses or rely on this guidance, which can be amended or revoked at any time by the Biden administration.

Risk of legal, regulatory or other political change

The success of the business strategy relating to the assets acquired from the Cape Payment Companies depends, in part, on the legality of the cannabis industry. The political environment surrounding the cannabis industry in general can be volatile and the regulatory framework remains in flux. To our knowledge, as of the date hereof, some form of cannabis has been legalized in 36 states, the District of Columbia, and the territories of Guam, U.S. Virgin Islands, Northern Mariana Islands and Puerto Rico; however, the risk remains that a shift in the regulatory or political realm could occur and have a significant impact on the industry as a whole, adversely impacting our business, results of operations, financial condition or prospects.

Delays in enactment of new state or federal regulations could restrict our ability to expand in this particular market. This growth strategy is contingent, in part, upon certain federal and state regulations being enacted to facilitate the legalization of medical and adult-use marijuana. If such regulations are not enacted, or enacted but subsequently repealed or amended, or enacted with prolonged phase-in periods, our growth in this particular market could be negatively impacted.

We are unable to predict with certainty when and how the outcome of these complex regulatory and legislative proceedings will affect our business in this particular market.

Further, there is no guarantee that state laws legalizing and regulating the sale and use of cannabis will not be repealed or overturned, or that local governmental authorities will not limit the applicability of state laws within their respective jurisdictions. If the federal government begins to enforce federal laws relating to cannabis in states where the sale and use of cannabis is currently legal under state law, or if existing applicable state laws are repealed or curtailed, our business, results of operations, financial condition and prospects would be materially adversely affected. Federal actions against individuals or entities engaged in the cannabis industry or a repeal of applicable marijuana legislation could adversely affect our business, results of operations, financial condition and prospects.

We are also aware that multiple states are considering special taxes or fees on businesses in the cannabis industry. It is a potential yet unknown risk at this time that other states are in the process of reviewing such additional fees and taxation. Should such special taxes or fees be adopted, this could have a material adverse effect upon our business, results of operations, financial condition or prospects.

Overall, the medical and adult-use cannabis industry is subject to significant regulatory change at both the state and federal level. Our inability to respond to the changing regulatory landscape may cause us to not be successful in developing this particular market and could adversely affect us.

The cannabis industry is a new industry that may not succeed

The cannabis industry is a new industry subject to extensive regulation, and there can be no assurance that it will grow, flourish or continue to the extent necessary to facilitate our success in this particular market.

Our operations in the U.S. cannabis market as a result of the assets acquired from the Cape Payment Companies may become the subject of heightened scrutiny

For the reasons set forth above, these operations in the U.S., and any future operations in this particular market may become the subject of heightened scrutiny by regulators, stock exchanges and other authorities in the U.S. As a result, we may be subject to

significant direct and indirect interaction with public officials. There can be no assurance that this heightened scrutiny will not in turn lead to the imposition of certain restrictions on our ability to exploit this acquisition.

Government policy changes or public opinion may also result in a significant influence over the regulation of the cannabis industry in the U.S. or elsewhere. A negative shift in the public's perception of medical and/or adult-use cannabis in the U.S. or any other applicable jurisdiction could affect future legislation or regulation. Among other things, such a shift could cause state jurisdictions to abandon initiatives or proposals to legalize medical and/or adult-use cannabis, thereby limiting the number of new state-legal cannabis markets into which we could expand. Any inability to fully implement such expansion strategy may result in a material adverse effect on this business, as well as the financial condition, results of operations or prospects thereof.

Regulatory scrutiny of the business comprising the Cape Payment Companies' industry may negatively impact our ability to raise additional capital

Our business activities relating to the assets acquired from the Cape Payment Companies rely, in part, on newly established and/or developing laws and regulations in the various states in which this business will operate. These laws and regulations are evolving and subject to change with minimal notice. Regulatory changes may adversely affect our results of operations in this regard. Additionally, the cannabis industry may come under the scrutiny or further scrutiny by the U.S. DOJ or other federal, state or non-governmental regulatory authorities or self-regulatory organizations that supervise or regulate the medical and/or adult-use cannabis markets in the U.S. It is impossible to determine the extent of the impact of any new laws, regulations or initiatives that may be proposed, or whether any proposals will become law. The regulatory uncertainty surrounding this industry may adversely affect our business and operations, including without limitation, the costs to remain compliant with applicable laws and the impairment of our ability to raise additional capital.

The change in presidential administration could result in increased misclassification claims against the Company.

During the Trump administration, the U.S. Department of Labor ("DOL") relaxed enforcement of misclassification claims under the Fair Labor Standards Act ("FLSA"). Additionally, just before President Trump left office, the DOL issued a new, company-friendly independent contractor standard via regulation that was set to go into effect in March 2021. However, after President Biden took office, the DOL paused and ultimately rescinded implementation of the regulation in May 2021. The DOL has not yet proposed a substitute regulation, meaning that previous, more worker-friendly standard is still in effect. Some legal experts expect the DOL to issue additional regulations or guidance proposing an even more worker-friendly standard, such as the "ABC" test that was implemented in California. Legal experts also expect the DOL under President Biden to become more aggressive in enforcing misclassification claims against companies, particularly in the gig economy space. The issuance of such additional regulations or guidance, or the increase in such DOL enforcement activity, could adversely affect our operations and profitability.

We are subject to a variety of risks relating to our relationships with the independent contractor drivers, including shortages of available drivers and possible increases in driver compensation.

In response to economic hardships experienced during the COVID-19 pandemic, the U.S. federal government rolled out stimulus payments in the first quarter of 2021 which we believe presented challenges in maintaining an appropriate level of driver supply at certain times and has required us to spend more to procure driver services in certain instances. Additional shortages of available drivers could require us to spend more to procure driver services and could create shortages at peak order times. Furthermore, we could face a challenge with having enough qualified drivers primarily due to intense market competition, which may subject us to increased payments for independent contractor driver rates that would negatively impact our profitability.

The COVID-19 pandemic, or a similar public health threat, could significantly affect our business, financial condition and results of operations.

Waitr has thus far been able to operate effectively during the COVID-19 pandemic. However, the spread of certain COVID variants and cases rising in areas with low vaccination rates provide continued uncertainty as to the potential short and long-term impacts of the pandemic on the global economy and on the Company's business, in particular. There remains uncertainty as to whether or not the pandemic will continue to impact diner behavior, and if so, in what manner. To the extent that the COVID-19 pandemic, or a similar public health threat, adversely impacts the Company's business, results of operations, liquidity or financial condition, it may also have the effect of heightening many of the other risks described in the risk factors in the Company's 2020 Form 10-K and this quarterly report on Form 10-Q for the three months ended September 30, 2021.

Our strategic initiative to change our corporate name and visual identity in a comprehensive rebrand may not be successful and may negatively impact our name recognition with customers and partners or otherwise impact our business.

In June 2021, we launched a strategic initiative to change our corporate name and visual identity in a comprehensive rebrand. There is no assurance that our rebranding initiative will be successful or result in a positive return on investment. In connection with the

Settlement, we agreed to adopt a new trademark or tradename to replace the Waitr trademark and to discontinue use of the Waitr trademark in connection with the marketing, sale or provision of any web-based or mobile app-based delivery, pick-up, carry-out or dine-in services using the Waitr trademark by June 22, 2022, unless extended by eight additional months in exchange for a one-time payment of $800. The failure by us to timely cease using the Waitr trademark provides Waiter.com, Inc. the right to pursue injunctive relief and liquidated damages. We could be required to devote significant resources to advertising and marketing in order to increase awareness of the new brand and for the successful integration of our rebranding process. Furthermore, our rebranding initiative may negatively impact our name recognition with customers and partners, which could have an adverse impact on our business.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None

Item 3. Defaults Upon Senior Securities

Not applicable

Item 4. Mine Safety Disclosures

Not applicable

Item 5. Other Information

None

Item 6. Exhibits

Exhibit No.	Description
10.1	Asset Purchase Agreement, dated as of August 9, 2021, by and among Waitr Holdings, Inc., Cape Payments LLC, Cape Cod Merchant Services LLC, Brett Husak, and Brad Anderson. (1)
10.2	Asset Purchase Agreement, dated as of August 9, 2021, by and among Waitr Holdings, Inc., Cape Payments LLC, Flow Payments LLC, Eastham Holdings LLC and ProMerchant LLC. (1)
10.3	Asset Purchase Agreement, dated as of August 9, 2021, by and among Waitr Holdings, Inc., Cape Payments LLC, ProMerchant LLC, Jabalah LLC and PMSB Holdings, LLC. (1)
10.4	Second Amended and Restated Open Market Sale Agreement dated August 30, 2021, by and between Waitr Holdings Inc. and Jefferies LLC (incorporated by reference to Exhibit 1.1 of the Current Report on Form 8-K (File No. 001-37788) filed by the Company on August 30, 2021).
10.5	Amendment No. 1 to Executive Employment Agreement dated April 23, 2021, by and between Waitr Holdings Inc. and Leo Bogdanov. (1)
10.6	Employment Agreement dated September 2, 2021, by and between Waitr Holdings Inc. and Armen Yeghyazarians. (1)
31.1	Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule15d-14(a). (1)
31.2	Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule15d-14(a). (1)
32.1	Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule15d-14(b) and 18 U.S.C. Section 1350. (1)
32.2	Certification of the Principal Financial Officer required by Rule 13a-14(b) or Rule15d-14(b) and 18 U.S.C. Section 1350. (1)
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

(1) Filed herewith

SIGNATURES

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

Dated: November 2, 2021

By: /s/ Leo Bogdanov

Leo Bogdanov
Chief Financial Officer
(Principal Financial Officer and Duly Authorized Officer)

Exhibit 10.1

ASSET PURCHASE AGREEMENT

DATED AS OF AUGUST 9, 2021

BY AND AMONG

WAITR HOLDINGS, INC.,

CAPE PAYMENTS, LLC,

CAPE COD MERCHANT SERVICES LLC,

BRETT HUSAK,

AND

BRAD ANDERSON

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of August 9, 2021, by and among Waitr Holdings Inc., a Delaware corporation ("Parent"), Cape Payments, LLC, a Delaware limited liability company ("Buyer"), Cape Cod Merchant Services LLC ("Seller"), and solely for purposes of Section 4.8 and Section 9.15, each of the undersigned Owners. Parent, Buyer and Seller are sometimes referred to collectively as the "Parties" and individually as a "Party." Except as otherwise set forth herein, capitalized terms used but not defined herein shall have the meaning specified in Appendix A.

RECITALS

A. The Company Group is engaged in the Business.

B. Buyer wishes to purchase from Seller, and Seller wishes to sell, assign and transfer to Buyer, certain assets and properties of Seller, upon the terms and subject to the conditions set forth herein.

C. Buyer has agreed to assume certain liabilities of Seller, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, based upon the above premises and in consideration of the mutual representations, warranties, covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I

PURCHASE AND SALE

1.1 Purchase of Assets Subject to the terms and conditions hereof, at the Closing Seller will (or will cause another member of the Company Group to) sell, transfer, assign and deliver to Buyer (or an Affiliate of Buyer nominated by Buyer), and Buyer (or such Affiliate of Buyer) will purchase from Seller (or such other member of the Company Group), all right, title and interest of Seller (or such other member of the Company Group) in the following assets :

(a) the Agreements set forth in Schedule 1-A, including rights to receive payment, goods or services and to assert claims and take other actions thereunder, of any and all Active Agreements (the "Acquired Agreements");

(b) the Intellectual Property Assets, including the Intellectual Property set forth in Schedule 1-B (collectively, the "Acquired IP");

(c) the Leases set forth in Schedule 1-C (the "Acquired Leases"); and

(d) all other properties, assets and rights of every nature, whether real, personal, tangible, intangible or otherwise and whether now existing or hereinafter acquired, owned (directly or indirectly) by the Company Group and relating to or used or held for use in connection with the Business except for the Excluded Assets (the "Acquired Seller Assets" and, together with the Acquired Agreements, the Acquired IP, and the Acquired Leases, the "Assets").

Subject to the terms and conditions hereof, at Closing, the Assets shall be transferred to Buyer free and clear of all liabilities, obligations, liens and Encumbrances excepting only Assumed Liabilities and Permitted Encumbrances.

1.2 Excluded Assets Notwithstanding anything to the contrary in Section 1.1 or elsewhere in the Agreement, Seller will retain and not sell transfer, assign or deliver, and Buyer will not purchase or acquire, the assets set forth in Schedule 1-D (the "Excluded Assets").

1.3 Assumption of Liabilities Subject to the terms and conditions hereof, at the Closing Buyer shall assume and agree to pay, perform, assume and discharge when due the following liabilities existing at or arising on or after the Closing Date (collectively, the "Assumed Liabilities"):

(a) all liabilities relating to the Assets, including trade and other accounts payable as set forth in the Estimated Closing Statement, that have been incurred in the ordinary course of business and are reflected on the Estimated Closing Balance Sheet included in the Estimated Closing Statement;

(b) all Taxes imposed with respect to, arising out of, or relating to the operation of the Business or the ownership of the Assets on or following the Closing Date;

(c) all Liabilities arising after the Closing in respect of the Contracts and Governmental Approvals included in the Assets (other than Liabilities attributable to any failure by the Company Group to comply with the terms thereof prior to the Closing), including, for the avoidance of doubt, Seller's duties to pay residual compensation to Seller's agents and affiliates (to the extent such duties arise under such Contracts and are not the result of a breach or failure to perform by the Company Group); and

(d) all Liabilities in respect of Transferred Employees arising after the Closing, other than any Liabilities retained by Seller or its Subsidiaries pursuant to Section 5.1.

1.4 Excluded Liabilities Except as set forth in Section 1.3 or any other provision hereof, Buyer shall not assume any Liabilities of any kind whatsoever (including Taxes of Seller or any Subsidiary of Seller, except as provided in Section 4.10 (Transfer Taxes) and Section 4.11 (Apportioned Obligations) hereof) relating to or arising out of the operation of the Business or the ownership of the Assets on or prior to the Closing other than the Assumed Liabilities (the "Excluded Liabilities"), including, without limitation, (a) any Liabilities in respect of Transaction Expenses, or (b) any Liabilities in respect of Indebtedness.

1.5 Consent of Third Parties Notwithstanding anything to the contrary herein, this Agreement shall not constitute an agreement to assign or transfer any interest in any Permit or Contract or any claim or right arising thereunder if such assignment or transfer without the consent or approval of a Third Party would constitute a Breach thereof or affect adversely the rights of Buyer thereunder, and any such transfer or assignment shall be made subject to such consent or approval being obtained. In the event any such consent or approval is not obtained prior to Closing the Closing shall occur without any adjustment to the Purchase Price and Seller shall use commercially reasonable efforts to obtain any such consent or approval after the Closing, and Seller will cooperate with Buyer in any lawful and economically feasible arrangement to provide that Buyer shall receive the interest of Seller in the benefits under any such Permit or Contract (in which case, for avoidance of doubt, the associated Taxes shall be Assumed Liabilities), including performance by Seller as agent, provided that Buyer shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent Buyer would have been responsible therefor if such consent or approval had been obtained. Seller shall bear all reasonable costs of seeking any such consent or approval. Nothing in this Section 1.5 shall be deemed a waiver by Buyer of its right to receive prior to Closing an effective assignment of all of the Assets nor shall this Section 1.5 be deemed to constitute an agreement to exclude from the Assets any assets described under Section 1.1.

1.6 Purchase Price The aggregate purchase price payable to Seller for the Assets shall equal (i) Three million dollars ($3,000,000), subject to adjustment as set forth herein (such aggregate amount, the "Closing Purchase Price"), plus (ii) 20% of the Earnout Amount (as defined in, and to be paid pursuant to the percentages set forth in Section 1.12(d) of, that certain Asset Purchase Agreement among Parent, Buyer, Flow Payments LLC and the other parties thereto dated as of the date hereof) (if any) (together with the Closing Purchase Price, the "Purchase Price"). The Closing Purchase Price shall consist of the following:

(a) An amount in cash (the "Cash Consideration") equal to Two Million Four Hundred Thousand dollars ($2,400,000) (the "Base Cash Consideration"), plus Closing Cash, plus the Closing Working Capital Excess Amount (if any), less the Closing Working Capital Deficiency Amount (if any), payable at the times and in the manner set forth in Section 1.7; and

(b) A number of shares of common stock of Parent (the "Parent Stock") equal to Six Hundred Thousand dollars ($600,000) divided by the Closing VWAP (the "Shares), payable at the times and in the manner set forth in Section 1.7."

1.7 Closing Date Payment and Issuance. At the Closing:

(a) Buyer shall pay to Seller an amount equal to (x) the Estimated Cash Consideration, less (x) the Payoff Amount, less (y) the Adjustment Holdback Amount less (z) the Indemnity Escrow Holdback Amount (such amount, the "Closing Cash Payment"), in cash, by wire transfer of immediately available funds to the account designated in writing by Seller;

(b) Buyer shall pay, or cause to be paid, by wire transfer of immediately available funds, the amounts payable pursuant to the Payoff Letters (the "Payoff Amount") to the account(s) designated in the Payoff Letters;

(c) Buyer shall deposit, or cause to be deposited, the Adjustment Holdback Amount with the Escrow Agent in accordance with the Escrow Agreement as security for any downward post-closing adjustment to the Purchase Price pursuant to Section 1.9;

(d) Buyer shall deposit, or cause to be deposited, the Indemnity Escrow Holdback Amount with the Escrow Agent in accordance with the Escrow Agreement as security for any indemnification claims made against Seller pursuant to Article VII;

(e) Buyer or Parent shall issue, or cause to be issued, to Seller (x) the Non-Indemnity Holdback Shares in book-entry form, and Buyer or Parent shall cause the record ownership of such Non-Indemnity Holdback Shares to be in the name of Seller (or in the names and percentage allocations of such other Persons as Seller may request via written notice to Buyer and Parent on a date that is no less than five (5) Business Days prior to Closing, all of whom shall be members of Seller), and (y) the Indemnity Holdback Shares in certificated form, and Buyer or Parent shall cause the record ownership of such Indemnity Holdback Shares to be in the name of Seller, subject to the Indemnity Holdback Share Pledge and the share lockup restrictions set forth in Section 1.9(d); provided, that, Buyer, Parent and Seller agree that if the Non-Indemnity Holdback Shares are issued directly to the members of Seller, each of the parties hereto shall treat each such issuance of shares for all Tax reporting purposes as a transfer to Seller, followed by a transfer by Seller to its members; and

(f) the Parties shall deliver or cause to be delivered the documents set forth in Section 1.10.

1.8 Closing Subject to the terms and conditions of this Agreement, the purchase and sale of the Assets and the assumption of the Assumed Liabilities contemplated hereby shall take place at a closing (the "Closing") to be held at 10:00 am, Eastern time, on the date that is not more than five (5) Business Days after the last of the conditions to Closing set forth in Article VI have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), at the offices of Goodwin Procter LLP, 601 Marshall Street, Redwood City, California, or remotely via electronic exchange of documents and signatures, or at such other time or on such other date or at such other place as Seller and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the "Closing Date"); provided that any requirement to deliver documents at the Closing may be satisfied by the electronic delivery of facsimile or portable document format signatures in accordance with Section 9.5.

1.9 Estimated Closing Statement; Purchase Price Adjustment

(a) Estimated Closing Statement. At least three (3) Business Days prior to the anticipated Closing Date, Seller shall deliver to Buyer a written statement (the "Estimated Closing Statement") consisting of (i) Seller's good faith estimate in reasonable detail (in each case

determined as of the Calculation Time, without giving effect to the transactions contemplated by this Agreement to take place at the Closing, in accordance with the Accounting Principles) of (x) the Closing Balance Sheet (the "Estimated Closing Balance Sheet"), (x) Closing Cash ("Estimated Closing Cash"), (y) Closing Working Capital (the "Estimated Closing Working Capital") and each element thereof, (z) the amount by which such Estimated Closing Working Capital differs from the Target Closing Working Capital (which may positive, negative or zero) and (ii) the Payoff Amount. If the Estimated Closing Working Capital as set forth in the Estimated Closing Statement is greater than Target Closing Working Capital, the "Estimated Working Capital Excess Amount" shall equal Estimated Closing Working Capital minus Target Closing Working Capital. If the Estimated Closing Working Capital as set forth in the Estimated Closing Statement is less than Target Closing Working Capital, the "Estimated Working Capital Deficiency Amount" shall equal Target Closing Working Capital minus Estimated Closing Working Capital. The "Estimated Cash Consideration" for purposes of Section 1.7 shall equal the Base Cash Consideration, plus the Estimated Closing Cash, plus the Estimated Working Capital Excess Amount (if any), less the Estimated Closing Working Capital Deficiency Amount (if any).

(b) Post-Closing Purchase Price Adjustment. No later than ninety (90) days after the Closing Date, Buyer shall prepare and deliver a statement (the "Final Closing Statement") consisting of the Buyer's good faith estimate in reasonable detail (and, in each case, determined as of the Calculation Time without giving effect to the transactions contemplated by this Agreement to take place at the Closing) and in accordance with the Accounting Principles, (i) the Closing Balance Sheet, (ii) the Closing Cash, (iii) the Closing Working Capital, (iv) the Closing Working Capital Excess Amount (if any), (v) the Closing Working Capital Deficiency Amount (if any), and (vi) the Cash Consideration. During the forty-five (45) day period following Buyer's delivery of the Final Closing Statement, Seller shall have, for the purposes of evaluating the Final Closing Statement, reasonable access (A) to the appropriate books and records of Buyer, including working papers, supporting schedules, calculations and other documentation used in the preparation of the Final Closing Statement and (B) to Buyer's officers, employees, agents and representatives as may be reasonably required in connection with the review or analysis of the Final Closing Statement. The Final Closing Statement and the Cash Consideration set forth therein shall be final and binding upon the Parties, and deemed accepted by Seller, unless within forty-five (45) days after Seller's receipt thereof, Seller provides Buyer with a written Objection Notice with respect to the Final Closing Statement (an "Objection Notice"). The Objection Notice shall specify in reasonable detail each item on the Final Closing Statement that Seller disputes and the nature of any objection so asserted and shall be limited to disputes or objections based on mathematical errors or based on Cash Consideration not being calculated in accordance with this Agreement (including, without limitation, not being calculated in accordance with the Accounting Principles). Seller shall be deemed to have agreed with all amounts and items contained in the Final Closing Statement to the extent such amounts and items are not raised in the Objection Notice. If Seller properly delivers an Objection Notice, any dispute raised therein shall be resolved pursuant to the procedures set forth in Section 1.11.

(c) Final Cash Consideration. The Cash Consideration shall be finally determined pursuant to Section 1.9(b) and, if applicable, Section 1.11. No later than five (5) Business Days after the date on which the Cash Consideration is finally determined:

(i) if Cash Consideration equals or exceeds Estimated Cash Consideration, then (x) Buyer shall pay to Seller an amount in cash equal to any excess of Cash Consideration over Estimated Cash Consideration (without any interest thereon) by wire transfer of immediately available funds to the account designated in writing by Seller and (y) Buyer and Seller shall jointly direct the Escrow Agent to release the full Adjustment Holdback Amount to Seller;

(ii) if Estimated Cash Consideration exceeds Cash Consideration, then Buyer and Seller shall jointly direct the Escrow Agent to (x) release to Buyer from the Adjustment Holdback Amount an amount equal to such excess and (y) to the extent the Adjustment Holdback Amount is greater than such excess, to release to Seller any remaining portion of the Adjustment Holdback Amount; and

(iii) if Estimated Cash Consideration exceeds Cash Consideration, and the excess is greater than the Adjustment Holdback Amount, (x) Buyer and Seller shall jointly direct the Escrow Agent to release to Buyer the full amount of the Adjustment Holdback Amount and (y) Seller shall pay to Buyer, in cash (without any interest thereon), by wire transfer of immediately available funds to the account designated in writing by Buyer, an amount equal to (1) the excess of Estimated Cash Consideration over Cash Consideration minus (2) the Adjustment Holdback Amount, and (z) if Seller fails to make the payment to Buyer pursuant to the foregoing clause (y) then, in addition to any other rights or remedies available to Buyer, Buyer shall be entitled to claim any amounts due to Buyer pursuant to this Section 1.9(c)(iii) from the Indemnity Holdback Amount.

(d) Indemnity Holdback Amount. Until (and including) the Holdback Release Date, and in order to secure Seller's indemnification obligations set forth in Article VII, (i) the Escrow Agent will retain the Indemnity Escrow Holdback Amount, which shall be paid or released in accordance with Section 7.6(c), (ii) Seller will retain, and will not sell, transfer, assign or otherwise distribute to its members or any other Person, any right, title or interest of any kind in the Indemnity Holdback Shares, other than as contemplated by Article VII (the "Indemnity Holdback Restriction"), and (iii) Seller will grant to Buyer a perfected first priority security interest in the Indemnity Holdback Shares (the "Indemnity Holdback Share Pledge").

1.10 Deliveries at Closing

(a) At or prior to the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

(i) duly executed counterpart to bills of sale, in forms and substance satisfactory to Buyer, with respect to the Assets (the "Bills of Sale");

(ii) a duly executed counterpart to an assignment and assumption agreement, in form and substance satisfactory to Buyer, with respect to the Acquired

Agreements and the Assumed Liabilities relating thereto (the "Agreements Assignment and Assumption Agreement");

(iii) a duly executed counterpart to assignment and assumption agreements, in form and substance satisfactory to Buyer, with respect to the Acquired IP and the Assumed Liabilities relating thereto (the "IP Assignment and Assumption Agreements");

(iv) a duly executed counterpart to an assignment and assumption agreement, in form and substance satisfactory to Buyer, with respect to the Acquired Leases and the Assumed Liabilities relating thereto (the "Lease Assignment and Assumption Agreement");

(v) a duly executed counterpart to an assignment and assumption agreement, in form and substance satisfactory to Buyer, with respect to the Assumed Liabilities not otherwise assumed pursuant to the agreements set forth in paragraphs (ii) to (iv) above (the "Other Assumed Liabilities Assignment and Assumption Agreement");

(vi) a duly executed counterpart to the Escrow Agreement;

(vii) copies of all notices, consents (including consents to assignment), compliance with notices (or waivers thereto) of rights of first refusal or similar rights, approvals, and certain other assignments as directed by Buyer, with respect to the Contracts (including the Acquired Agreements, Acquired IP and Acquired Leases) set forth in Schedule 1.10(a)(vii), in each case, in form and substance satisfactory to Buyer;

(viii) a true and correct copy of the resolutions of Seller's managers authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby;

(ix) a true and correct copy of the Seller Member Approval;

(x) a true and correct copy of each Payoff Letter, duly executed by each borrower and creditor thereunder, in customary form reasonably satisfactory to the Buyer and providing for the termination of such Indebtedness and related documents and the termination and release of all Encumbrances securing such Indebtedness;

(xi) a duly executed certificate pursuant to Treasury Regulations Section 1.1445-2(b) evidencing that Seller is not a foreign person within the meaning of Section 1445 and Section 1446 of the Code;

(xii) documents evidencing the Indemnity Holdback Share Pledge, reasonably satisfactory to Buyer;

(xiii) a true and correct copy of Seller's IRS Form W-9;

(xiv) duly completed at-will onboarding documentation of Key Employees;

(xv) a duly executed copy of employment agreement by Brett Husak, in form and substance satisfactory to Buyer, providing for an annual cash salary of $300,000, a grant of 100,000 restricted stock units, such RSUs shall vest over three years, a discretionary bonus as of 2023, and customary non-competition and non-solicitation covenants in favor of the Buyer; and

(xvi) such other documents as Buyer may reasonably request to effect the intent of this Agreement and consummate the transactions contemplated hereby.

(b) At or prior to the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

(i) a duly executed counterpart to the Bills of Sale;

(ii) a duly executed counterpart to the Agreement Assignment and Assumption Agreement;

(iii) duly executed counterparts to the IP Assignment and Assumption Agreements;

(iv) a duly executed counterpart to the Lease Assignment and Assumption Agreement;

(v) a duly executed counterpart to the Other Assumed Liabilities Assignment and Assumption Agreement;

(vi) duly executed counterparts to at-will on-boarding documentation of Key Employees;

(vii) a duly executed counterpart to the Escrow Agreement;

(viii) a duly executed copy of employment agreement by Brett Husak, in form and substance satisfactory to Buyer, providing for an annual cash salary of $300,000, a grant of 100,000 restricted stock units, each of which shall vest over three years, a discretionary bonus as of 2023, and customary non-competition and non-solicitation covenants in favor of the Buyer; and

(ix) such other documents as the Seller may reasonably request to effect the intent of this Agreement and consummate the transactions contemplated hereby.

1.11 Post-Closing Dispute Resolution Procedures During the thirty (30) Business Day period following the date on which a proper Objection Notice is received by Buyer, Buyer and Seller shall seek in good faith to resolve any objections contained therein. If Buyer and Seller are

unable to resolve the dispute within such thirty (30) Business Day period, then any disputed matter set forth in the Objection Notice, as the case may be, that remains unresolved shall be submitted by Buyer for final determination to Marcum LLP or, if Marcum LLP declines to serve, such other independent accounting firm of national reputation selected by the mutual agreement of Buyer and Seller (the "Independent Accounting Firm"). The Independent Accounting Firm shall, based solely on the presentations made by Buyer and Seller and within thirty (30) days after its appointment, render a written report as to the calculation of the Closing Working Capital; provided that in no event shall the Independent Accounting Firm's determination of Cash Consideration, as the case may be, be outside the range of disagreement between Buyer and Seller. The Independent Accounting Firm shall have exclusive jurisdiction over, and resort to the Independent Accounting Firm shall be the sole recourse and remedy of the Parties against one another or any other Person with respect to, any disputes arising out of or relating to the calculation of Cash Consideration; provided that no Party will be precluded by this sentence from enforcing the determination of the Independent Accounting Firm. The Independent Accounting Firm's determination shall be conclusive and binding on all Parties and shall be enforceable in a court of law. In connection with the resolution of any dispute, each Party shall pay its own fees and expenses, including legal, accounting and consultant fees and expenses. The Independent Accounting Firm shall calculate the allocation of its fees and expenses between Buyer and Seller based upon a fraction (expressed as a percentage), (x) the numerator of which is the aggregate dollar value of the amount of Cash Consideration actually contested that is not awarded to Buyer or Seller (as the case may be) and (y) the denominator of which is the aggregate dollar value of Cash Consideration actually contested between the Parties. For purposes of the preceding sentence, the amount of Cash Consideration actually contested by each of Buyer or Seller shall be determined by reference to their respective written presentations submitted to the Independent Accounting Firm pursuant to this Section 1.11. For example and solely for the purposes of illustration, if Seller claims that the appropriate adjustments are $1,000 greater than the amount determined by Buyer and if the Independent Accounting Firm ultimately resolves such dispute by awarding to Seller $300 of the $1,000 contested, then the fees, costs and expenses of the dispute resolution process contemplated by this Section 1.11 will be allocated 30% (i.e., 300 divided by 1,000, expressed as a percentage) to Buyer and 70% (i.e., 700 divided by 1,000, expressed as a percentage) to Seller.

1.12 Resereved.

1.13 Withholding Rights. Buyer shall be entitled to deduct and withhold such amounts as it is required to deduct and withhold with respect to the making of any payment under any provision of federal, state, local or foreign Tax Law; *provided* that Buyer shall use commercially reasonable efforts to notify Seller of such amounts and provide Seller or the relevant recipient a reasonable opportunity to mitigate or eliminate any withholding with respect to payments pursuant to this Agreement and the Parties shall use commercially reasonable efforts to cooperate to eliminate any withholding on payments made pursuant to this Agreement. To the extent that amounts are so withheld by Buyer and properly remitted to the applicable Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to Seller. Buyer shall timely pay such withheld amounts to the applicable Governmental Authority. As of the date hereof, Buyer is not aware of any withholding obligations under any provision of federal, state, local or foreign Tax Law that would require Buyer to deduct or withhold any amounts pursuant to this Section 1.13, subject to receipt of Seller's IRS Form W-9.

1.14 Allocation of Purchase Price Buyer and Seller agree upon the allocation of the Purchase Price and Assumed Liabilities (the "Aggregate Consideration") as set forth on Schedule 1.14, subject to adjustments of the Purchase Price pursuant to Section 1.9 and, if applicable, Section 1.11 (the "Allocation Schedule"). The Allocation Schedule shall comply with the allocation method required by Section 1060 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, shall reflect the parties' agreement as to the fair market value of each of the Assets immediately prior to Closing, and shall be reflected on IRS Form 8594 (Asset Acquisition Statement under Section 1060), and shall be used by the Parties in preparing their respective income tax returns. The Parties covenant and agree with each other that none of them will take a position on any income tax return or in any other proceeding that is in any way inconsistent with the allocation set forth on Schedule 1.14, subject to adjustments of the Aggregate Consideration (with such adjustments to be allocated among the Assets as reasonably agreed by the parties), except as otherwise required by a taxing authority subsequent to an audit defended in good faith.

1.15 Tax Treatment Any payment by Buyer or Seller, as the case may be, pursuant to Section 1.9 or Article VII will be treated as an adjustment to the Purchase Price, unless otherwise required by applicable Law.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF SELLER

In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer and Parent (except as set forth in the Schedules of Seller, which shall be arranged in sections corresponding to the sections of this Agreement; provided that disclosures in any section of the Schedules shall qualify any other section in this Agreement to which it is reasonably apparent from a reading of such Schedules without assuming any knowledge of the matters disclosed therein that such information is relevant to any other section), as follows:

2.1 Organization and Qualification Seller and each other member of the Company Group is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of its formation, with power and authority to carry on its business (including the Business) and to own or lease and to operate its properties as and in the places where such business is conducted and such properties are owned, leased or operated, except where the failure to be in good standing or have such authority would not have a Material Adverse Effect. Seller and each other member of the Company Group is duly qualified or licensed to do business in each jurisdiction in which the properties and assets owned, leased or operated by the respective Company Group member in the conduct of the Business or the nature of the Business makes such qualification necessary, except where the failure to be so licensed or qualified would not have a Material Adverse Effect. Seller has delivered to Buyer complete and correct copies of the organizational documents of each member of the Company Group (including the Seller Operating Agreement), in each case, as amended and in effect on the date hereof. Neither the Seller nor any other member of the Company Group is in violation of any of the provisions of its organizational documents in any material respect.

2.2 Contemplated Transactions General Compliance

(a) Enforceability; Authority. Seller has all requisite power and authority to enter into this Agreement and the other Ancillary Agreements to be executed and delivered by Seller, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Assuming due authorization, execution and delivery of this Agreement by the other Parties hereto, this Agreement constitutes a valid and binding obligation of Seller and any other member of the Company Group, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally and by general principles of equity (whether in a proceeding at law or in equity) (the "Creditor's Rights Exception"). The execution, delivery and performance of this Agreement and the other agreements contemplated hereby to be executed and delivered by Seller and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite action on the part of Seller and any other member of the Company Group, including all actions required pursuant to the terms of the Seller Operating Agreement, and no other proceedings on the part of Seller or any other member of the Company Group are necessary to authorize the execution, delivery or performance of this Agreement or the other agreements contemplated hereby. The Seller has obtained the Seller Member Approval in accordance with the terms of the Seller Operating Agreement.

(b) No Conflict. The execution and delivery of this Agreement and the other agreements contemplated hereby and the consummation or performance of any of the transactions contemplated hereby or thereby will not: (i) conflict with or violate any provisions of the organizational documents of the Seller or any other member of the Company Group; or (ii) Breach any provisions of or result in the termination, cancellation, modification, maturation or acceleration of, any rights or obligations under any Material Contract, Order or Law to which the Seller or any other member of the Company Group is subject or by which any member of the Company Group's properties or assets is bound except, in the case of this clause (ii), in respect of the notice and consent requirements set forth in Schedule 2.2(d), except in the cases of clauses (i) and (ii), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect.

(c) Subsidiaries. Seller has no Subsidiaries.

(d) Consents; Governmental Filings. Except as set forth in Schedule 2.2(d), neither Seller nor any other member of the Company Group is required as the result of any Law, Order, Material Contract or the acquisition by Buyer of any Asset to (i) give any notice to (including notice to satisfy rights of first refusals or such similar rights of Third Parties) or obtain any consent from any Third Party in connection with the execution and delivery of this Agreement, (ii) obtain consent in connection with the assignment of any Asset to Buyer, (iii) comply with or obtain a waiver regarding any right of first refusal or similar right held by a Third Party in connection with the assignment of any Asset to Buyer, or (iv) obtain approval from a Third Party with respect to any other agreements contemplated hereby or the consummation or performance of any of the transactions contemplated by this Agreement. No filings or registration with, notification to, or authorization, license, clearance, permit, qualification, waiver, order, consent or approval of any Governmental Authority (collectively, "Governmental Filings") are required in connection with

the execution, delivery and performance of the transactions contemplated by this Agreement by Seller, except as stated on Schedule 2.2(d).

2.3 Financial Statements

(a) Attached as Schedule 2.3 are true and complete copies of the Financial Statements. The Financial Statements have been prepared in accordance with the Accounting Principles and fairly present, as of their respective dates, in all material respects the financial position, results of operation and cash flows of the Business at the dates and for the relevant periods indicated. The balance sheets included in the Financial Statements do not include any material assets or liabilities not intended to constitute a part of the Business or the Assets after giving effect to the transactions contemplated hereby (other than the Excluded Assets and the Excluded Liabilities). The statements of income and retained earnings and statements of cash flows included in the Financial Statements do not reflect the operations of any entity or business not intended to constitute a part of the Business or the Assets after giving effect to the transactions contemplated hereby (other than the Excluded Assets and the Excluded Liabilities).

(b) Seller has devised and maintained systems of internal accounting controls with respect to the Business sufficient to provide reasonable assurances that (i) all transactions are executed in accordance with management's general or specific authorization, (ii) all transactions are recorded as necessary to permit the preparation of financial statements in conformity with the applicable past accounting practices and to maintain proper accountability for items and (iii) access to its property and assets is permitted only in accordance with management's general or specific authorization.

2.4 Indebtedness Schedule 2.4 sets forth the Indebtedness of Seller and each other member of the Company Group as of the date of this Agreement, other than current liabilities incurred in the ordinary course of business consistent with past practice.

2.5 No Undisclosed Liabilities Neither Seller nor any other member of the Company Group has any liabilities or obligations, whether known, unknown, absolute, accrued, contingent or otherwise and whether due or to become due, arising out of or relating to the Business or the Assets except (a) as set forth on Schedule 2.4 or Schedule 2.5, (b) as and to the extent reflected, disclosed or reserved against in the Latest Balance Sheet or specifically disclosed in the notes thereto and (c) for liabilities and obligations that were incurred after the Latest Balance Sheet Date in the ordinary course of business consistent with past practice and reflected in the Estimated Closing Balance Sheet included in the Estimated Closing Statement.

2.6 Absence of Certain Changes Except as set forth in Schedule 2.6 or as otherwise expressly contemplated by this Agreement, from the Latest Balance Sheet Date until the date of this Agreement, (a) the Business has been conducted in all material respects in the ordinary course of business, (b) there have been no changes, events, results, occurrences, states of fact, circumstances or developments that would constitute a Material Adverse Effect and (c) Seller has not taken (or not taken) any action that, if taken (or not taken) from the date hereof would have required Buyer's consent under Section 4.1.

2.7 Material Contracts

(a) Schedule 2.7(a) sets forth all Contracts, of the type described below, to which Seller and any other member of the Company Group is a party and relate to the Business or the Assets or by which any of the Assets are bound, other than the Indebtedness disclosed pursuant to Section 2.4; Leases disclosed pursuant to Section 2.8(c); the Inbound Licenses and Outbound Licenses; the Benefit Plans disclosed pursuant to Section 2.13(a); the insurance policies disclosed pursuant to Section 2.16, and the Affiliate Contracts disclosed pursuant to Section 2.17 (all such Contracts, together with the Contracts disclosed on Schedule 2.7(a), the "Material Contracts"):

(i) each Contract that involves aggregate consideration in excess of $10,000 and that, in each case, cannot be cancelled by Seller without penalty or without more than thirty (30) days' notice;

(ii) each Contract or group of related Contracts with the same party for the purchase by any member of the Company Group of products or services (A) under which the undelivered balance exceeds $10,000, or (B) which based on monthly payments prior to the Closing Date, involves a payment obligation of any member of the Company Group in excess of $3,000 individually or in the aggregate;

(iii) each Contract or group of related Contracts with the same party for the sale of products or services by any member of the Company Group (A) under which the undelivered balance exceeds $10,000, or (B) which based on monthly payments prior to the Closing Date, involves a payment obligation to any member of the Company Group in excess of $3,000 individually or in the aggregate;

(iv) each Contract that requires a member of the Company Group to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;

(v) each Contract that (A) prohibits any member of the Company Group from engaging in any line of business or competing with any Person or in any geographic area (B) restricts the Persons to whom a member of the Company Group may sell products or deliver services, (C) contains an exclusivity obligation, most-favored-nation provision or "best price" obligation enforceable against a member of the Company Group;

(vi) each Contract that grants any rights of first refusal, rights of first offer or other similar rights to any Person with respect to any asset of a member of the Company Group;

(vii) each Contract pursuant to which a member of the Company Group has acquired or disposed of any business, a material amount of stock or assets of

any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(viii) each Contract for the employment of any officer or individual employee, and any Contract for the provision of consulting services by any individual person or any Contract for the provision of services by any independent contractor, in each case which involves aggregate consideration in excess of $10,000 per year and which cannot be terminated without penalty by the member of the Company Group party thereto on notice of thirty (30) days or less;

(ix) any Contract that is a settlement or conciliation agreement with any Governmental Authority or Person, relating to the resolution or settlement of an actual or threatened Action and pursuant to which the Company Group will have any material outstanding obligation after the date of this Agreement;

(x) all Contracts that provide for the indemnification by a member of the Company Group of any Person or the assumption of liability of any Person and that are otherwise Material Contracts;

(xi) each lease or agreement under which a member of the Company Group is lessor of, or permits any third party to hold or operate, any tangible property, real or personal, owned by any member of the Company Group;

(xii) all Contracts with any Governmental Authority;

(xiii) any Contracts that provide for any joint venture, partnership or similar arrangement by any member of the Company Group;

(xiv) all collective bargaining agreements or Contracts with any union or other labor organization;

(xv) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(xvi) each Contract pursuant to which a member of the Company Group may be required to pay commissions or royalty payments; and

(xvii) any Contract involving a franchise arrangement with any third party (including an Affiliate Contract) involving any Company Group Intellectual Property.

(b) Each Material Contract is valid and binding on the member of the Company Group that is party thereto in accordance with its terms and is in full force and effect, subject to the Creditor's Rights Exception. Neither Seller nor, to Seller's Knowledge, any other party thereto is in Breach in any material respect under any Material Contract. To Seller's Knowledge, the other

parties to the Material Contracts have fully complied with their obligations thereunder. Except as set forth in Schedule 2.7(b), no party has delivered written notice of termination and, to Seller's Knowledge, no party has threatened to exercise any termination right with respect to any Material Contract. Except as set forth in Schedule 2.7(b), to Seller's Knowledge, no event or circumstances has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. True, correct and complete copies of the Material Contracts, including all amendments, schedules, exhibits and other attachments thereto, have been delivered to Buyer prior to the date hereof.

(c) Except as set forth in Schedule 2.7(c), no consent of or notice to any Third Party is required under any Material Contract as a result of or in connection with, and the terms of and enforceability of any Material Contract will not be affected by, the execution, delivery and performance of this Agreement or any of the other agreements contemplated hereby or the consummation of the transactions contemplated hereby and thereby.

2.8 Assets

(a) Title to Assets, etc. Seller (or another member of the Company Group, as applicable) has good and valid title to, or otherwise has the right to use pursuant to a valid and enforceable lease, license or similar contractual arrangement, all of the Assets except as may be disposed of in the ordinary course of business consistent with past practice after the date hereof and in accordance with this Agreement, in each case free and clear of any Encumbrance other than Permitted Encumbrances. Other than this Agreement, there are no agreements with, options or rights granted in favor of, any person to directly or indirectly acquire any Asset, or any interest therein or any tangible properties or assets of a member of the Company Group, other than as set forth in Schedule 2.2(d). No tangible assets or properties used by each member of the Company Group in the conduct of its business, as currently conducted, are held in the name or in the possession of any person or entity other than such member of the Company Group. There are no voting trusts, proxies or other agreements, understandings or obligations in effect with respect to the voting, transfer or sale (including any rights of first refusal, rights of first offer or drag-along rights), issuance (including any pre-emptive or anti-dilution rights), redemption or repurchase (including any put or call or buy-sell rights), or registration (including any related lock-up or market standoff agreements) with respect to any of the Assets or any member of the Company Group, except as set forth in Schedule 2.2(d).

(b) Sufficiency of Assets, etc. The Assets constitute all of the assets required for the conduct of the Business as conducted on the date hereof. To the Knowledge of Seller, there are no facts or conditions affecting any material Assets which would reasonably be expected, individually or in the aggregate, to interfere with the current use, occupancy or operation of such Assets.

(c) Real Property and Leases. No member of the Company Group currently owns or has in the past owned any real property. Schedule 2.8(c) sets forth true and correct addresses of all real property leased or rented by any member of the Company Group (the "Leased Property"). The Leased Property constitutes all of the facilities used or occupied in the conduct of the Business

as currently conducted. Each parcel of the Leased Property is the subject of a written lease agreement (each, a "Lease"), and there are no oral terms inconsistent with the written terms thereof. To the Knowledge of Seller, the Company Group's use and operation of the Leased Property conform to all applicable Laws, Permits and Orders in all material respects. Seller has not received written notice from landlords or any Governmental Authority that: (i) relates to violations of building, zoning, safety or fire ordinances or regulations; (ii) claims any defect or deficiency with respect to any of such properties; or (iii) requests the performance of any repairs, alterations or other work to the Leased Property, in each case that has not been subsequently addressed or corrected. Except as set forth in Schedule 2.8(c), Seller and each other member of the Company Group has exclusive possession of each Leased Property, there are no leases, subleases, licenses, concessions or other agreements, written or oral, granting to any other party or parties the right of use or occupancy with respect to such Leased Property. The Leased Property has been supplied with utilities and other services reasonably sufficient for the operation of the Business as currently conducted. All Leases are valid and binding agreements, enforceable in accordance with their respective terms, are in full force and effect and are not in default.

2.9 Intellectual Property

(a) All of the Intellectual Property Assets are held by Seller or another member of the Company Group and are Assets being acquired pursuant to Article I of this Agreement. Schedule 2.9(a) lists all issued patents, registered trademarks, registered copyrights, registered domain names and all applications for the registration or issuance of any of the foregoing owned by or exclusively licensed to any member of the Company Group that are Intellectual Property Assets (collectively, the "Business Registered Intellectual Property"), indicating as to each item as applicable: (i) the jurisdictions in which such item is issued or registered or in which any application for issuance or registration has been filed, (ii) the respective issuance, registration, or application number of the item, (iii) the dates of application, issuance or registration of the item, (iv) expiration dates (for domain names only), and (v) name of registrant.

(b) Each item of the Business Registered Intellectual Property is (i) subsisting in good standing, and not the subject of any pending or, to Seller's Knowledge, threatened proceeding before any Governmental Authority challenging its extent, validity, enforceability or Seller's ownership thereof (except in the course of prosecution thereof), and (ii) to Seller's Knowledge and excluding applications, valid and enforceable.

(c) Schedule 2.9(c) lists all material Contracts, to which a member of the Company Group is a party, relating to the development, ownership, or license of any rights under any Intellectual Property Assets, including licenses, sublicenses, consents and other agreements: (i) by which any member of the Company Group is authorized to use any material Intellectual Property Assets ("Inbound Licenses"), other than commercially available off the shelf software that is not incorporated into any commercial product or service of any member of the Company Group that is software, for which the relevant member of the Company Group pays less than $10,000 in licensing or other fees per annum; (ii) by which any member of the Company Group is restricted from the use or exploitation of any material Intellectual Property Assets (including, co-existence agreements and settlement agreements); (iii) by which an Intellectual Property Asset owned or purported to be owned by a member of the Company Group is or has been developed for such

member of the Company Group, assigned to such member of the Company Group, or assigned by such member of the Company Group to a Third Party (excluding agreements with Employees and contractors entered into in the ordinary course of business that grant all rights in such IP to such member of the Company Group); and (iv) by which a member of the Company Group authorizes a Third Party to use any material Intellectual Property Assets ("Outbound Licenses"), other than non-exclusive licenses granted in the ordinary course of business to (A) customers of the Business pursuant to standard end-user agreements of each member of the Company Group (to the extent applicable), the form of which has been provided to special counsel for Buyer, consistent with past practice in connection with the use of products or services of the Business, or (B) service providers, distributors or other business partners in the ordinary course of business, in connection with the performance of services for the Business or relevant activities regarding its products or services.

(d) Seller has taken all reasonable measures and steps to protect all confidentiality and value of the Intellectual Property Assets.

(e) All former and current employees and contractors of each member of the Company Group that have been involved in the development of any Intellectual Property for a member of the Company Group have executed written instruments with the applicable member of the Company Group that assign to such member of the Company Group all rights, title and interest in and to any and all such Intellectual Property, including as applicable, inventions, improvements, ideas, discoveries, developments, writings, works of authorship, know-how, processes, methods, technology, data, information and other intellectual property.

(f) The Seller or another member of the Company Group is the sole owner of the Intellectual Property Assets that are owned by the Company Group, free and clear of all Encumbrances, except Permitted Encumbrances or any requirement of any past (if outstanding), present or future payment. The Seller or another member of the Company Group owns all right, title and interest in and to, or has a valid and enforceable license, sublicense, or right to use, all of the Intellectual Property Assets used in and necessary for the conduct of the Business.

(g) Except as set forth in Schedule 2.9(g), neither the Seller nor any other member of the Company Group has any pending, unresolved notice, claim, demand or other assertion since January 1, 2018 made to or, as of the date hereof, from any other Person, including for the avoidance of doubt, any cease and desist letter or offer of license, (i) alleging any infringement, dilution or misappropriation (including, challenging the use) by a member of the Company Group of any other Person's Intellectual Property with respect to the Business, (ii) challenging the ownership, use, validity or enforceability of any Intellectual Property Assets owned by a member of the Company Group or (iii) relating to the security of Company Data.

(h) Except as set forth in Schedule 2.9(h), (i) to Seller's Knowledge the operation of the Business or any activity by any member of the Company Group with respect to the Business does not infringe upon, violate or constitute misappropriation of, and has not infringed, violated or constituted misappropriation of, the Intellectual Property of any other Person, provided that the foregoing representation and warranty shall with respect to patent infringement be limited to Seller's Knowledge, and (ii) to Seller's Knowledge, the Intellectual Property Assets owned by a

member of the Company Group and used in the operation of the Business has not been infringed, diluted or misappropriated by any other Person.

(i) Buyer has reviewed Seller's privacy policies located on Seller's applicable websites and domains, including any security and data privacy policies maintained on each website and each mobile application of Seller (collectively, "Company Data"), which are compliant with applicable Law in all material respects. The Company Group's practices with regard to the collection, dissemination, safeguarding and use of Company Data are and have been in compliance with all Privacy Commitments. The Seller and the Company Group have taken all organizational, physical, administrative and technical measures required by Privacy Commitments and consistent with standards prudent in the industry in which the Seller and the Company Group operate to protect the integrity, security and operations of all Assets, IT Infrastructure and all Personal Information. To Seller's Knowledge, there has been no material loss of, or intentional and unauthorized access, use, disclosure or modification of any Company Data. Neither Seller nor any other member of the Company Group has received any inquiries from or been subject to any audit or Litigation by any Governmental Authority regarding Company Data. No Litigation alleging (a) a material violation of any person's privacy rights or (b) unauthorized access, use or disclosure of Company Data has been asserted or threatened against Seller or any other member of the Company Group.

(j) In connection with each third-party servicing, outsourcing, processing, or otherwise using Personal Information collected, held, or processed by or on behalf of the Seller and/or the Company Group, the Seller and Company Group have in accordance with applicable Privacy Commitments entered into valid, binding an enforceable written data processing agreements with any such third party to protect and secure Personal Information from data security incidents and restrict use of Personal Information to those authorized or required under the servicing, outsourcing, processing, or similar arrangement.

2.10 Litigation Except as set forth on Schedule 2.10, since January 1, 2018, there has not been, and there is no pending or, to Seller's Knowledge, threatened Litigation or Order: (i) by or against any member of the Company Group or any of the Assets; (ii) that challenges the transactions contemplated by this Agreement and the agreements contemplated hereby; or (iii) that seeks to enjoin or prohibit consummation of, or seeks other equitable relief with respect to, the transactions contemplated by this Agreement and the agreements contemplated hereby. There is no unsatisfied judgment or any open injunction binding upon any member of the Company Group that would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Seller to enter into and perform its obligations under this Agreement. Since January 1, 2018, there have been no misclassification claims regarding any employee (including any Business Employee) or independent contractor against Seller or any other member of the Company Group.

2.11 Compliance with Laws or Orders; Permits; Regulatory

(a) Except as set forth on Schedule 2.11(a), since January 1, 2018, to the Knowledge of Seller, no member of the Company Group is or has been in Breach of any Law or Order in any

material respect. Since January 1, 2018, no member of the Company Group has received notice of any violation of any applicable Law from any Governmental Authority.

(b) Seller holds and is in compliance with, to the extent required by applicable Law, all Permits required for the conduct of the Business and such Permits required for the conduct of the Business are Assets being acquired pursuant to Article I of this Agreement. Schedule 2.11(b) lists all Permits issued in connection with the Business, including the names of the Permits, their holders, and their respective dates of issuance and expiration.

2.12 Environmental Matters Seller has complied and is in compliance in all material respects with all applicable Environmental Laws pertaining to the Business or the Assets and the use and ownership thereof. No violation by any member of the Company Group is being or has been alleged in writing or, to the Knowledge of Seller, orally of any applicable Environmental Law relating to the Business or the Assets or the use or ownership thereof.

2.13 Employee Benefit Plans

(a) Schedule 2.13(a) sets forth a complete and correct list of all material Company Benefit Plans. None of the Company Benefit Plans is a Standalone Plan and, except as set forth on Schedule 2.13(a), neither the Seller nor any other member of the Company Group has any Liabilities under, or with respect to, any Company Benefit Plan. With respect to each material Company Benefit Plan, Seller has made available to Buyer a complete and correct copy or, if not written, summary of the applicable plan document.

(b) Each Company Benefit Plan (including any related trust) has been established, operated and administered in substantial compliance with its terms and applicable Laws, including ERISA, the Code, and the Patient Protection and Affordable Care Act of 2010. No Company Benefit Plan is intended to be qualified under Section 401(a) of the Code and no member of the Company Group has maintained, sponsored or contributed to any Company Benefit Plan intended to be qualified under Section 401(a) of the Code. As of the date of this Agreement, there is no pending or, to Seller's Knowledge, threatened material Action relating to any Company Benefit Plan with respect to the Business Employees, except for routine claims for benefits, which could reasonably be expected to result in any material liability to the Company.

(c) No member of the Company Group or any of their ERISA Affiliates has ever (i) maintained, sponsored, contributed to or has any obligation to contribute to (whether contingent or otherwise) any plan that is subject to Title IV of ERISA, or (ii) has any liability (contingent or otherwise) with respect to, any plan that is subject to Title IV of ERISA. There are no circumstances under which Buyer or any of its Affiliates could reasonably expect to be assessed any Liability under Title IV of ERISA or Section 412 or 430 of the Code by reason of being treated as a single Person with Seller and its Affiliates prior to the Closing. No Company Benefit Plan is subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code, or is a "multi-employer plan" (as defined in Section 3(37) of ERISA). The Company has not withdrawn from any pension plan under circumstances resulting (or expected to result) in a liability to the Pension Benefit Guaranty Corporation. No Company Benefit Plan provides welfare benefits after termination of employment except to the extent required by Section 4980B of the Code.

(d) Except as set forth on Schedule 2.13(d), the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not, whether alone or in combination with any other event, (i) entitle any Business Employee to severance pay or any other payment, (ii) result in any payment becoming due, accelerate the time of payment or vesting of benefits, or increase the amount of compensation due to any Business Employee, (iii) result in any forgiveness of indebtedness, trigger any funding obligation in respect of any Company Benefit Plan or otherwise or (iv) result in any "payment" to any "disqualified individual" (in each case within the meaning of Treasury Regulation Section 1.280G-1) that could reasonably be construed, individually or in combination with any other such payment, to constitute an "excess parachute payment" (within the meaning of Section 280G(b)(1) of the Code). No Person is entitled to receive any additional payment (including any tax gross-up or other payment) from any member of the Company Group as a result of the imposition of the excise Taxes under Section 4999 of the Code or any Taxes required by Section 409A of the Code or due to loss of any Tax deduction under Section 280G of the Code.

2.14 Labor

(a) Schedule 2.14(a) sets forth a list, as of the date hereof, of all Business Employees. Seller has provided or made available to Buyer, as of the date hereof, for each Business Employee, such employee's title, annual base salary, the date of hire of each such employee and each such employee's principal work location.

(b) No member of the Company Group is a party to, or bound by, any collective bargaining agreement and there are no labor unions or other organizations representing, or to the Seller's Knowledge purporting or attempting to represent any Business Employees. There is no pending or, to Seller's Knowledge, threatened, and there has not been, any strike, lockout, slowdown, or work stoppage by or with respect to the Business Employees. The consent of, consultation of or the rendering of formal advice by any labor or trade union, works council or any other employee representative body is not required for the execution and delivery of this Agreement by the Seller or the consummation of the transactions contemplated hereby. There is no unfair labor practice charge or complaint, grievance or labor arbitration, pending or threatened, against Seller before the National Labor Relations Board or any Governmental Authority or arbitrator.

(c) To the Knowledge of Seller, Seller, each other member of the Company Group, and each of their Affiliates is, and since January 1, 2018 has been, in compliance in all material respects with all applicable Laws respecting labor, employment and employment practices, including all Laws respecting terms and conditions of employment or engagement, fair employment practices, employment standards, workers' compensation, meal and rest breaks, occupational safety and health requirements, plant closings, wages and hours, pay equity, worker classification, benefit plan participation, discrimination, sexual harassment, affirmative action, work authorization, immigration, Form I-9 matters, requirements, guidelines and recommendations in response to the COVID-19 pandemic (including, but not limited to, the Coronavirus Aid, Relief, and Economic Security Act or the American Rescue Plan Act), continuation coverage under group health plans, pension commitments, disability rights or benefits, equal opportunity, human rights, labor relations, employee leave issues and unemployment insurance and related matters. With respect

to each individual who has rendered services to or on behalf of the Business, whether directly or indirectly (including through a third person), Seller, each other member of the Company Group, and each of their Affiliates has accurately classified each such individual as an employee, independent contractor, or otherwise under any and all applicable Laws, and each such individual classified as an employee has been properly classified as exempt or nonexempt under any and all applicable Laws. Seller and its Affiliates have not, any time within the six (6) months preceding the date of this Agreement, had any "plant closing" or "mass layoff" (as defined in the WARN Act) or other terminations of employees that would create any obligations upon, or liabilities for Buyer under the WARN Act or similar state and local laws.

(d) Except as would not result in material liability for the Company Group: (i) each member of the Company Group has fully and timely paid all wages, salaries, wage premiums, commissions, bonuses, severance and termination payments, fees, and other compensation that have come due and payable to its current or former employees and independent contractors, (ii) each individual currently employed, or who was since January 1, 2018 employed, by a member of the Company Group is and has been properly classified under applicable wage and hour Laws, and (iii) each individual who is providing, or since January 1, 2018 has provided, services to a member of the Company Group and is and has been classified or treated as an independent contractor, consultant, leased employee, or other non-employee service provider is and has been properly classified and treated as such for all applicable purposes.

(e) There are no complaints, lawsuits or other proceedings pending or, to Seller's Knowledge, threatened against Seller, any other member of the Company Group, or any of their Affiliates brought by or on behalf of any Business Employee or any current or former prospective employee or individual service provider of Seller or any other member of the Company Group, including any pending or threatened complaint filed by any such individual with the National Labor Relations Board, the Equal Employment Opportunity Commission, or any equivalent Governmental Authority responsible for the prevention of unlawful employment practices.

(f) There is no pending or, to Seller's Knowledge, threatened claim or litigation against Seller or any member of the Company Group with respect to allegations of sexual harassment, discrimination or other workplace misconduct, and (i) there have been no reported internal or external complaints accusing any supervisory or managerial Business Employee (or employee of Seller, any member of the Company Group, and their Affiliates who performed services for the Business) of sexual harassment, discrimination or other workplace misconduct and (ii) there has been no settlement of, or payment arising out of or related to, any litigation or complaint with respect to sexual harassment, discrimination or other workplace misconduct. No member of the Company Group reasonably expects any material liabilities with respect to any allegations of sexual harassment, discrimination or other workplace misconduct, and no member of the Company Group is aware of any such allegations relating to its officers, directors, employees, contractors, or agents that, if known to the public, would bring the Company Group into material disrepute.

2.15 Taxes

(a) All Tax Returns required to have been filed with respect to the Business, the Assets, Seller and any other member of the Company Group have been duly and timely filed. All such

Tax Returns were correct and complete in all material respects. Except as set forth on Schedule 2.15(a), all Taxes due and owing by Seller (or any other member of the Company Group) with respect to the Business or the Assets have been duly and timely paid. Neither Seller (nor any other member of the Company Group) is currently the beneficiary of, or has made any currently outstanding request with respect to the Business or Assets for, any extension of time within which to file any Tax Return. No written notice of a claim is currently outstanding by a Governmental Authority in a jurisdiction where Seller (or any other member of the Company Group) does not pay a particular type of Tax or file a particular type of Tax Return that Seller (or any other member of the Company Group) is or may be subject to such taxation by, or required to file any such Tax Return with, that jurisdiction, in each case in respect of the Business or the Assets. There are no liens for Taxes (other than Taxes not yet due and payable) upon any of the Assets.

(b) All Taxes required to have been withheld with respect to the Business or the Assets have been duly and timely withheld and such withheld Taxes have been either duly and timely paid to the proper Governmental Authority or properly set aside in accounts for such purpose.

(c) Except as set forth on Schedule 2.15(c), no Tax audits, investigations or administrative or judicial Tax proceedings are currently being conducted in respect of the Business or the Assets. Neither Seller nor any other member of the Company Group has received from any Governmental Authority (including jurisdictions where Seller or such other member of the Company Group has not filed a Tax Return) in respect of the Business or the Assets any written (i) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by such Governmental Authority, in the case of each of (i) through (iii), that has not been resolved.

(d) Seller has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, in each case in respect of the Business or Assets, which waiver or extension is currently in effect.

(e) Seller has charged, collected and remitted on a timely basis all sales Taxes as required under applicable Tax Laws to be charged, collected and remitted on any sale, supply, provision of services or delivery by Seller in respect of the Business.

(f) Buyer will not be required to include any item of income in taxable income after the Closing as a result of any prepaid amount received by Seller or any other member of the Company Group prior to the Closing Date.

(g) Seller does not have any liability for the Taxes of any other Person whether under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, or by Contract (other than Contracts entered into in the ordinary course of business not primarily related to Taxes).

2.16 Insurance. Schedule 2.16 sets forth a complete and accurate list of all policies and Contracts for insurance (including coverage amounts, policy numbers, issuer, type of insurance, annual premiums and expiration dates) relating to the Assets or the Business as of the date hereof

(collectively, the "Insurance Policies"), and complete and accurate copies of such Insurance Policies have been made available to Buyer. All Insurance Policies are in full force and effect in accordance with their terms. No written notice of cancellation, termination, premium increase or alteration of coverage has been received by Seller with respect to any Insurance Policy. All Insurance Policies (a) are valid and binding in accordance with their terms, (b) to Seller's Knowledge are provided by carriers who are financially solvent, and (c) have not been subject to any lapse in coverage. No insurance carrier under any Insurance Policy has issued a reservation of rights with regard to or disputed its obligation with respect to any material claim.

2.17 Affiliate Transactions. Except as set forth in Schedule 2.17, there are no Contracts, transactions, or arrangements between Seller or another member of the Company Group, on the one hand, and any Affiliate of Seller or another member of the Company Group, on the other hand (each, an "Affiliate Contract"). Except as set forth in Schedule 2.17, no current officer, director, manager or member of Seller or another member of the Company Group or, to Seller's Knowledge, any current member or employee, or any "affiliate" or "associate" (as those terms are defined in Rule 405 promulgated under the Securities Act) of any such Person, has had, either directly or indirectly, a material interest in: (a) any person or entity that purchases from, or sells, licenses or furnishes to, Seller or any other member of the Company Group any goods, property, technology, intellectual or other property rights or services; or (b) any Contract to which Seller or another member of the Company Group is a party or by which it may be bound.

2.18 Anti-Bribery; Anti-Money Laundering.

(a) Neither Seller, its Affiliates, nor any director, officer or employee of or, to Seller's Knowledge, agent, distributor, affiliate, representative or any other Person acting on behalf of, Seller or its Affiliates or the Business, has directly or indirectly made any bribes, rebates, payoffs, influence payments, kickbacks, illegal payments, illegal political contributions, or other payments, in the form of cash, gifts, or otherwise, or taken any other action, in violation of the Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010 or any other applicable anti-bribery or anti-corruption law (collectively, the "Anti-Bribery Laws").

(b) Seller has not received written notice that Seller or to Seller's Knowledge, its Affiliates, any director, officer or Employee of or, to Seller's Knowledge, agent, distributor, affiliate or representative acting on behalf of, Seller or its Affiliates or the Business, are or have been the subject of any investigation or inquiry by any Governmental Authority with respect to potential violations of Anti-Bribery Laws.

(c) Seller has not received any written notice that it, or to Seller's Knowledge, its Affiliates, any director, officer or Employee of or, to Seller's Knowledge, agent, distributor, affiliate or representative acting on behalf of, Seller or its Affiliates or the Business, have been the subject of current, pending, or, to Seller's Knowledge, threatened investigation, inquiry or enforcement proceedings for violations of Anti-Money Laundering Laws, or violated or received any notice, request or citation for any actual or potential noncompliance with Anti-Money Laundering Laws.

(d) The Business has been conducted in compliance with applicable Anti-Money Laundering Laws in all material respects.

2.19 Brokers' Fees. No member of the Company Group has incurred, or made commitments for, any brokerage, finders', investment bankers' or similar fee or commission in connection with the transactions contemplated by this Agreement.

2.20 Investigation. Seller has conducted its own independent investigation, review and analysis of Buyer. Seller acknowledges and agrees that (a) in making its decision to enter this Agreement and to consummate the transactions contemplated hereby, Seller (i) has relied solely upon its own investigation and the express representations and warranties of Buyer set forth in Article III hereof, (ii) has had such time as Seller deems necessary and appropriate to fully and completely review and analyze the information, documents and other materials related to Buyer that have been provided to Seller by or on behalf of Buyer or which are publicly available to Seller and (iii) has been provided an opportunity to ask questions of Buyer with respect to such information, documents and other materials and has received satisfactory answers to such questions and (b) none of Buyer or any other Person has made any representation or warranty as to Buyer or this Agreement whatsoever, express or implied, except as expressly set forth in Article III hereof.

2.21 Disclaimer of Other Representations and Warranties. Except as previously set forth in this Article II (as modified by the Schedules), neither Seller nor any related Person or Person acting on behalf of any of them make any representation or warranty, express or implied, at law or in equity, with respect to Seller or any of its assets, liabilities or operations or the transactions contemplated by this Agreement, and any such other representations or warranties are hereby expressly disclaimed.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PARENT AND BUYER

Parent and Buyer represent and warrant to Seller (except as set forth in the applicable Schedules referenced below as well as any other section in this Agreement to which it is reasonably apparent from a reading of such Schedules without assuming any knowledge of the matters disclosed therein that such information is relevant to any other section) as follows:

3.1 Organization. Parent is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. The copies of the Certificate of Incorporation and Bylaws of Parent as most recently filed with the SEC Reports (as defined below) are true, correct, and complete copies of such documents as in effect as of the date of this Agreement. Parent is not in violation of any of the provisions of its Certificate of Incorporation and Bylaws. Buyer is a wholly-owned subsidiary of Parent and was formed solely for the purpose of entering into this Agreement and consummating the transactions contemplated hereby.

3.2 Contemplated Transactions; General Compliance.

(a) Enforceability; Authority. Each of Parent and Buyer has all requisite corporate power and authority to enter into this Agreement and the other agreements contemplated hereby to be executed and delivered by Parent or Buyer, as applicable, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Assuming due authorization, execution and delivery of this Agreement by the other Parties hereto, this Agreement constitutes a valid and binding obligation of Parent and Buyer, enforceable against Parent and Buyer in accordance with its terms, subject to the Creditor's Rights Exception. The execution, delivery and performance of this Agreement and the other agreements contemplated hereby to be executed and delivered by Parent and Buyer and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate action on the part of Parent and Buyer, and no other proceedings on the part of Parent or Buyer or their respective shareholders are necessary to authorize the execution, delivery or performance of this Agreement or the other agreements contemplated hereby.

(b) No Conflict. The execution and delivery of this Agreement and the other agreements contemplated hereby, and the consummation or performance of any of the transactions contemplated hereby or thereby will not: (i) conflict with or violate any provisions of the organizational documents of Parent or Buyer; or (ii) Breach any provisions of or result in the termination, maturation or acceleration of, any rights or obligations under any Contract, Order or Law, to which Parent or Buyer is subject, to which Parent or Buyer is a party or by which any of Parent's or Buyer's properties or assets is bound, except in the case of clause (ii) where such Breach, termination, maturation or acceleration would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Parent and its Subsidiaries, taken as a whole, or on Parent or Buyer's ability to consummate the transactions contemplated by this Agreement.

(c) Governmental Filings. No Governmental Filings are required in connection with the execution, delivery and performance of the transactions contemplated by this Agreement by Buyer, except for the consents stated in Schedule 2.2(d) and in respect of applicable requirements of the Federal Securities Laws.

3.3 Brokers' Fees. Neither Parent nor Buyer has incurred, or made commitments for, any brokerage, finders', investment bankers' or similar fee or commission in connection with the transactions contemplated by this Agreement.

3.4 Sarbanes-Oxley Act. Parent is in compliance in all material respects with applicable requirements of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and applicable rules and regulations promulgated by the SEC thereunder in effect as of the date of this Agreement.

3.5 Litigation. There is no pending or, to Parent's or Buyer's Knowledge, threatened Litigation or Order by or against Parent or Buyer (i) that challenges the transactions contemplated by this Agreement and the agreements contemplated hereby; or (ii) that seeks to enjoin or prohibit consummation of, or seeks other equitable relief with respect to, the transactions contemplated by

this Agreement and the agreements contemplated hereby. No event has occurred or circumstance exists that (with or without notice or lapse of time or both) is reasonably likely to give rise to or serve as a basis for the commencement of any such Litigation or Order. There are no, and have been no, Orders against the Parent or the Buyer. There is no unsatisfied judgment or any open injunction binding upon the Parent or the Buyer that would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Parent or Buyer to enter into and perform their obligations under this Agreement or that would reasonably be expected to have a material adverse effect on Buyer and its Subsidiaries, taken as a whole.

3.6 Capitalization; Shares.

(a) As of March 31, 2021, the authorized capital stock of Parent consisted of 249,000,000 shares of common stock, par value $0.0001 per share, of which 115,387,140 were issued and outstanding.

(b) Immediately prior to the Closing, the Shares to be issued pursuant to this Agreement will be duly and validly reserved for issuance, and upon issuance will be validly issued and outstanding as fully paid and non-assessable shares in the capital of Parent and shall be free and clear of any lien, claim or encumbrance other than any such liens, claims or encumbrances contemplated by this Agreement and shall not be subject to any pre-emptive rights, rights of first offer, rights of first refusal or similar rights of any Person. The issuance of the Shares will comply in all material respects with all Laws, including state securities Laws and Federal Securities Laws.

3.7 SEC Reports; Financial Statements. Parent has timely filed or furnished, as applicable, all registration statements, prospectuses, reports, schedules, forms, statements, and other documents (including exhibits and all other information incorporated by reference) required to be filed or furnished by it with the SEC since January 1, 2020 (collectively, as they have been amended since the time of their filing and including all exhibits thereto, the "SEC Reports"). True, correct, and complete copies of all the SEC Reports are publicly available on EDGAR. As of their respective filing dates or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of the last such amendment or superseding filing (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), each of the SEC Reports complied as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act, and the Sarbanes-Oxley Act, and the rules and regulations of the SEC thereunder applicable to such SEC Reports. None of the SEC Reports, as of their respective dates (or if amended or superseded by a filing prior to the date of this Agreement or the Closing Date, then on the date of such filing), contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. None of the SEC Reports is the subject of ongoing SEC review or outstanding SEC investigation with respect to any accounting practices of Parent and there are no outstanding or unresolved comments received from the SEC with respect to any of the SEC Reports regarding any accounting practices of Parent. The audited financial statements and unaudited interim financial statements (including, in each case, the notes and schedules thereto) included in the SEC Reports complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied

on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by Form 10-Q of the SEC) and fairly presented (subject, in the case of the unaudited interim financial statements included therein, to normal year-end adjustments (but only if the effect of such adjustments would not, individually or in the aggregate, be material) and the absence of complete footnotes) in all material respects the financial position of Parent as of the respective dates thereof and the results of operations, changes in stockholders' equity and cash flows of Parent for the respective periods then ended. To the Knowledge of Parent, there are no SEC inquiries or investigations, other governmental inquiries or investigations, or internal investigations pending or, to the Knowledge of Parent, threatened, in each case regarding any accounting practices of Parent.

3.8 Reporting Company. Parent is a publicly-held company subject to reporting obligations pursuant to Section 13 of the Exchange Act, and the Parent Stock is registered pursuant to Section 12(b) of the Exchange Act.

3.9 Listing. The Parent Stock is listed on NASDAQ. Parent is in material compliance with all applicable NASDAQ listing and corporate governance rules.

3.10 Investment Company. Parent is not an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

3.11 Investigation. Each of Parent and Buyer acknowledges and agrees that it has conducted its own inquiry, independent investigation, review and analysis of Seller, the Assets and the Assumed Liabilities. Each of Parent and Buyer acknowledges and agrees that (a) in making its decision to enter this Agreement and to consummate the transactions contemplated hereby, each of Parent and Buyer (i) has relied upon such inquiry, investigation, review and analysis and the representations and warranties of Seller set forth herein, (ii) has formed an independent judgment concerning the Business and the Assets and the transactions contemplated by this Agreement, (iii) has had such time as Buyer and Parent deem necessary and appropriate to fully and completely review and analyze the information, documents and other materials related to Seller, the Business, the Assets and the Assumed Liabilities that have been provided to Buyer by or on behalf of Seller or which are publicly available to Buyer and Parent and (iv) has been provided an opportunity to ask questions of Seller with respect to such information, documents and other materials and has received satisfactory answers to such questions, (b) except as expressly set forth in this Agreement, Buyer shall acquire the Assets and assume the Assumed Liabilities in “as is” condition and on a “where is” basis and (c) none of Seller nor any other Person has made any representation or warranty as to Seller, the Assets or the Assumed Liabilities or this Agreement whatsoever, express or implied, except as expressly set forth in Article II hereof.

3.12 Disclaimer of Other Representations and Warranties. Except as previously set forth in this Article III, Buyer makes no representation or warranty, express or implied, at law or in equity, with respect to it or any of its assets, liabilities or operations, and any such other representations or warranties are hereby expressly disclaimed.

ARTICLE IV

COVENANTS

4.1 Conduct of Business Prior to the Closing. Except as contemplated on Schedule 4.1, or with the written consent of Buyer, which may not be unreasonably withheld, conditioned or delayed, during the period from the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with its terms, Seller shall (i) conduct the Business in the ordinary course of business, (ii) use commercially reasonable efforts to preserve the Business's business organization and relationships with third parties (including lessors, licensors, suppliers, distributors and customers) and keep available the service of their present employees and service providers, and (iii) continue to obtain all necessary consents and provide required notices in connection with any Acquired Agreement to be acquired by Buyer in this Agreement. Without limiting the generality of the foregoing, and except as otherwise permitted in this Agreement or with the prior written consent of Buyer (which shall not be unreasonably withheld, conditioned or delayed), Seller shall not, during the period from the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with its terms, directly or indirectly do, or propose or commit to do, or otherwise cause to occur, any of the following with respect to any member of the Company Group:

(a) make any change in or amendment to its organizational documents;

(b) declare, set aside, make or pay any dividend or other distribution, other than distributions paid solely in cash;

(c) (i) except in the ordinary course of business, (A) enter into any Contract that, had it been entered into prior to the date of this Agreement, would be a Material Contract or an Affiliate Contract, or (B) materially amend, modify, terminate or cancel (x) any existing Material Contract or (y) any Contract that, had it been entered into or amended prior to the date of this Agreement, would be a Material Contract, (ii) fail to perform any of its material obligations under all Contracts relating to or affecting the Assets or Business, or (iii) amend, terminate or cancel any Acquired Agreement, any Acquired IP or Acquired Lease (other than the termination of any such agreement in accordance with its terms);

(d) enter into any agreement that restricts the ability of any member of the Company Group to engage or compete in any line of business, or enter into any agreement that restricts the ability of any member of the Company Group to enter a new line of business;

(e) except in the ordinary course of business, discontinue any business material to the Business or sell, lease, license, transfer or otherwise dispose or permit the cancellation, abandonment or dedication to the public domain of any of the material property rights (including Intellectual Property) or assets of the Business, other than as required pursuant to existing Contracts or commitments;

(f) acquire (by merger, consolidation, purchase, or other acquisition of equity interests or assets) any Person or any material properties or assets of any Person, except for acquisitions of properties, assets, inventory and equipment in the ordinary course of business;

(g) incur any Indebtedness, issue any debt securities, or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any Person;

(h) make any loans, advances or capital contributions to, or investments in, any other Person, or forgive, cancel or compromise any debt or claim, in each case, other than in the ordinary course of business;

(i) fail to pay its debts, Taxes and other obligations when due;

(j) except as required by applicable Law or the terms of any Company Benefit Plan as in effect on the date of this Agreement, (A) amend, terminate, enter into or adopt any Company Benefit Plan (or any arrangement that would be a Company Benefit Plan if it was in effect on the date hereof) or any collective bargaining agreement; (B) grant or increase the compensation or benefits or other pay (including base salary or hourly rate, bonus, severance, termination, commissions and incentive compensation) of any Business Employee or other individual service provider of the Business; (C) pay, grant, or increase any severance or termination pay to (or otherwise amend any such existing arrangement with) any current or former Business Employee or other individual service provider of the Business; (D) accelerate the vesting or payment of, or fund or in any other way secure the payment, compensation or benefits under, any Company Benefit Plan or otherwise; or (E) grant any new awards, or modify the terms of any outstanding awards under any Company Benefit Plan or otherwise;

(k) hire any employee other than any hourly employee in the ordinary course of business;

(l) modify any employment arrangement with any Business Employee or terminate the employment of any Business Employee, other than (y) terminations for cause;

(m) implement or announce any group employee layoffs, plant closings, reductions in force, furloughs or temporary layoffs that would trigger notice obligations under the WARN Act;

(n) cancel, compromise or settle any material Litigation, or intentionally waive or release any material rights, with respect to the Business;

(o) make any changes to its accounting principles or practices, other than as may be required by Law or GAAP;

(p) other than in the ordinary course of business or consistent with past practices, change in any material respect the policies or practices of the Business with

regard to the extension of discounts or credit to customers or collection of receivables from customers;

(q) change or revoke any Tax election or change any method of accounting for Tax purposes; in each case with respect to the Business or Assets to the extent such election or method of accounting would be binding on Buyer following the Closing Date;

(r) violate any applicable Law or Order;

(s) enter into or adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization, merger or consolidation or other reorganization; or

(t) agree, authorize, recommend, propose or announce an intention to do any of the foregoing, or enter into any contract, agreement, commitment or arrangement to do any of the foregoing.

4.2 Access to Information. Between the date of this Agreement and the earlier of the Closing and the termination of this Agreement in accordance with its terms, Seller shall (a) afford the officers, employees, accountants, counsel, financial advisors and other representatives of Buyer reasonable access during normal business hours to such of the properties, books, Contracts, commitments, records and officers of Seller and any other member of the Company Group as Buyer may reasonably request and (b) furnish Buyer and its representatives with such financial, operating and other data related to the Business as Buyer or any of its representatives may reasonably request; provided that (i) such access shall be exercised in such a manner as to not interfere unreasonably with the conduct of the Business, (ii) the Party granting access may withhold any document (or portions thereof) or information (x) that is subject to the terms of a non-disclosure agreement with a third party, (y) that may constitute privileged attorney-client communications or attorney work product and the transfer of which, or the provision of access to which, as reasonably determined by such Party's counsel, constitutes a waiver of any such privilege or (z) if the provision of access to such document (or portion thereof) or information, as determined by such Party's counsel, would reasonably be expected to conflict with applicable Law.

4.3 SEC Matters. Seller shall, and shall cause each other member of the Company Group to, as promptly as reasonably practicable, provide Parent with all information concerning Seller and any other member of the Company Group, its respective businesses, management, operations and financial condition, in each case, that is reasonably required to be included in any form, report, schedule or other document filed by Parent with the SEC and all amendments, modifications and supplements thereto. It is the sole responsibility of Parent to interpret and determine appropriate SEC guidance as it applies to Parent and Buyer and to timely communicate requirements to Seller. Seller shall fully cooperate and make commercially reasonable efforts to timely provide any information to Parent that is required to be included within any SEC filing. Seller shall make, and shall cause each member of the Company Group to make, their Affiliates, directors, officers, managers, employees, accountants and auditors reasonably available to Parent and its counsel in connection with the drafting of any filings to be made by Parent under the Federal Securities Laws.

4.4 Indebtedness Payoff. On or prior to the Closing Date, Seller shall obtain and provide to Parent a true and correct copy of a payoff letter with respect to each of the items listed on Schedule 2.4 (collectively, the "Payoff Letters") duly executed by each borrower, creditor and other party thereunder, in customary form and providing for the termination of such Indebtedness and related documents and the termination and release of all Encumbrances securing such Indebtedness.

4.5 Satisfaction of Closing Conditions. Subject to the terms and conditions of this Agreement, (i) each Party shall use its commercially reasonable efforts to cause the conditions set forth in Article VI to be satisfied and to take or cause to be taken all actions, to do or cause to be done and to assist and cooperate with the other Parties hereto in doing all things necessary, proper or advisable under applicable Laws and regulations to consummate the transactions contemplated herein in the most expeditious manner practicable, including: (x) obtaining applicable consents, waivers or approvals of, or providing appropriate and timely notice of the transactions set forth in this Agreement to, any Third Party of the Acquired Agreements, Acquired IP, Acquired Lease and other Assets to be acquired by Buyer pursuant to this Agreement; and (y) the execution and delivery of such instruments, and the taking of such other actions as the other Parties may reasonably require in order to carry out the intent of this Agreement (including making any Governmental Filings).

4.6 Books and Records. From and after the Closing, Buyer agrees that it shall preserve and keep the records acquired or otherwise held by it or its Affiliates as of the Closing Date relating to the Business, the Assets and the Assumed Liabilities for a period of seven (7) years from the Closing Date. Thereafter, Buyer shall have the right to destroy such records.

4.7 Confidentiality.

(a) The Parties and their respective representatives shall treat all nonpublic information obtained in connection with this Agreement and the transactions contemplated hereby as confidential in accordance with the terms of the Confidentiality Agreement. The terms of the Confidentiality Agreement shall continue in full force and effect until the Closing, at which time such Confidentiality Agreement shall terminate. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement shall continue in full force and effect as provided in Section 8.2 in accordance with its terms.

(b) From and after the Closing, Seller will keep in strict confidence, and will not, directly or indirectly, except as required by Law or, if applicable, in the course of any member of Seller performing his or her duties after the Closing as a partner, officer or employee of Buyer, at any time, disclose, furnish, disseminate, make available or use any trade secrets or confidential business and technical information of the Business or Buyer, any of its Subsidiaries, affiliated or related companies, or any of their respective clients, customers or vendors, whatever its nature and form and without limitation as to when or how Seller may have acquired such information. Such confidential information includes the unique selling and servicing methods and business techniques, training, service and business manuals, promotional materials, training courses and other training and instructional materials, vendor and product information, customer and prospective customer lists, other customer and prospective customer information and other

confidential business information with respect to the Business or Buyer. Such confidential information does not include any information that is or becomes publicly known other than as a result of a Breach of Seller's obligations (whether under this Agreement or otherwise) or any confidential information included in or retained by the Seller solely in connection with the Excluded Assets. Seller specifically acknowledges that all such confidential information, whether reduced to writing, maintained on any form of electronic media or maintained in the mind or memory of such Person and whether compiled by Seller, derives independent economic value from not being readily known to or ascertainable by proper means by others who can obtain economic value from its disclosure or use, that reasonable efforts have been made to maintain the secrecy of such information, that such information will be the sole property of Buyer and that any retention and use of such information by Seller (except, if applicable, in the course of any member of Seller performing his or her duties after the Closing as a partner, officer or employee of Buyer) will constitute a misappropriation of Buyer's trade secrets and a Breach of this Agreement. In the event that Seller or its representatives becomes legally compelled to disclose any information referred to in this Section 4.7(a), Seller shall provide Buyer with prompt written notice before such disclosure, to the extent legally permitted, sufficient to enable Buyer either to seek a protective order, at Buyer's expense, or another appropriate remedy preventing or prohibiting such disclosure.

4.8 Non-Competition; Non-Solicitation; Non-Disparagement.

(a) For a period of three (3) years commencing on the Closing Date, neither Seller nor any Owner shall, directly or indirectly, (i) engage in or assist others in engaging in any Competitive Activity in the Territory except on behalf of Buyer or (ii) take any action with the intent of interfering in any material respect with the business relationships (whether formed before or after the date of this Agreement) between Buyer and processing companies, businesses and Third Parties that have been introduced to processing companies by Seller, any Owner or Buyer (or by other parties on behalf of Seller, any Owner or Buyer), or customers and suppliers of Buyer (including, for the avoidance of doubt, with respect to the Business and the Assets). For purposes of this Section 4.8(a), "Territory" means North America.

(b) For a period of three (3) years commencing on the Closing Date, neither Seller nor any Owner shall, directly or indirectly, hire, solicit or induce, or attempt to hire, solicit or induce, any employee of Buyer or its Subsidiaries or encourage any such employee to leave or reduce such employment or hire any such employee who has left such employment (including, for the avoidance of doubt, employees of the Business); provided that nothing in this Section 4.8(b) shall prevent Seller or any Owner from soliciting or hiring (x) any employee whose employment has been terminated by Buyer or its Subsidiaries without cause; or (y) after 120 calendar days from the date of termination of employment, any employee whose employment has been terminated by the employee. Nothing in this Section 4.8(b) shall prevent Seller or any Owner from hiring any employee who responds to a general advertisement or solicitation for employment, including but not limited to advertisements or solicitations through newspapers, trade publications, periodicals, radio or internet database.

(c) For a period of three (3) years commencing on the Closing Date, neither Seller nor any Owner shall, directly or indirectly, solicit, call on or entice, or attempt to solicit, call on or

entice, any processing companies, contracting parties that have been introduced to processing companies by Seller, any Owner or Buyer (or by other parties on behalf of Seller, any Owner or Buyer), customers, suppliers or other Third Parties that have conducted business with Buyer or its Subsidiaries (including, for the avoidance of doubt, any contracting parties, processing companies or Third Parties that have been introduced to processing companies that constitute a part of the Assets or the Business), in each case for purposes of diverting business or services from Buyer or its Subsidiaries; provided however this clause (c) shall not prohibit the Seller or any Owner from soliciting or hiring any person who responds to a general advertisement or solicitation, including but not limited to advertisements or solicitations through newspapers, trade publications, periodicals, radio or internet database.

(d) Seller and each Owner acknowledges that a Breach or threatened Breach of this Section 4.8 may give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a Breach or a threatened Breach by Seller or any Owner of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such Breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(e) Seller, each Owner and Buyer agree and intend that Seller's and each Owner's obligations under this Section 4.8 be tolled during any period that Seller or any Owner is in Breach of any of the obligations under this Section 4.8, so that Buyer is provided with the full benefit of the restrictive periods set forth herein.

(f) For a period of three (3) years commencing on the Closing Date, Seller and each Owner will refrain from, in any manner, directly or indirectly, all conduct, oral or otherwise, that disparages or damages or could reasonably be expected to disparage or damage the reputation, goodwill, or standing in the community of the Buyer, its Subsidiaries, the Business or the Assets. It shall not however be a breach of this Subsection to testify truthfully in any judicial, administrative or arbitration proceeding or to make statements or allegations in legal filings, depositions or responses to interrogatories that are based on reasonable belief and are not made in bad faith. Notwithstanding anything herein to the contrary, nothing in this paragraph shall prevent Buyer or Parent from exercising its authority or enforcing its rights or remedies hereunder or that Buyer or Parent may otherwise be entitled to enforce or assert under any other agreement or applicable Law, or limit such rights or remedies in any way.

(g) For a period of three (3) years commencing on the Closing Date, Buyer and Parent will refrain from, in any manner, directly or indirectly, all conduct, oral or otherwise, that disparages or damages or could reasonably be expected to disparage or damage the reputation, goodwill, or standing in the community of Seller and each Owner. It shall not however be a breach of this Subsection to testify truthfully in any judicial, administrative or arbitration proceeding or to make statements or allegations in legal filings, depositions or responses to interrogatories that are based on reasonable belief and are not made in bad faith. Notwithstanding anything herein to the contrary, nothing in this paragraph shall prevent Seller or an Owner from exercising its authority or enforcing its rights or remedies hereunder or that Seller or an Owner may otherwise

be entitled to enforce or assert under any other agreement or applicable Law, or limit such rights or remedies in any way.

(h) Seller and each Owner acknowledges that the restrictions contained in this Section 4.8 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 4.8 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this Section 4.8 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

4.9 Further Assurances. The Parties shall cooperate reasonably with the other Parties hereto and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information, (b) execute and deliver to each other such other documents, and (c) do such other acts and things, all as any other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the transactions contemplated hereby.

4.10 Transfer Taxes**.** All Transfer Taxes shall be paid when due and shall be borne 50% by Seller and 50% by Buyer. Buyer shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Seller shall reasonably cooperate with respect thereto), and the non-filing party shall cooperate with the filing party in filing such Tax Returns.

4.11 Apportioned Obligations. All real or personal property and similar ad valorem Taxes for a taxable period that includes the Closing Date ("Apportioned Obligations"), shall be apportioned between the portion of such taxable period ending on the day before the Closing Date (the "Pre-Closing Tax Period") and the portion beginning on the Closing Date (the "Post-Closing Tax Period") on a per diem basis. Seller shall be liable for any such Apportioned Obligations apportioned to the Pre-Closing Tax Period and Buyer shall be liable for any such Apportioned Obligations apportioned to the Post-Closing Tax Period.

4.12 Cooperation as to Tax Matters. Buyer and Seller shall reasonably cooperate, and shall cause their respective Affiliates, officers, employees, agents, auditors and other representatives to reasonably cooperate, at the requesting party's expense with respect to reasonable out of pocket expenses, in preparing and filing all Tax Returns and in resolving all disputes and audits with respect to all taxable periods relating to Taxes for taxable periods ending on or before the Closing Date or beginning on or before the Closing Date, including by retaining, maintaining and making available to each other all records to the extent reasonably necessary in connection with Taxes and making employees reasonably available on a mutually convenient basis to provide additional information or explanation or to testify at proceedings relating to Taxes.

4.13 No Parent Stock Transactions. From and after the date of this Agreement until the Closing, neither Seller nor any other member of the Company Group nor any of their Affiliates, directly or indirectly, shall engage in any transactions involving the securities of Parent. Seller shall use commercially reasonable efforts to require each of its Affiliates and representatives to comply with the foregoing sentence.

4.14 Audit. Seller shall cooperate with Parent (at Parent's expense) in the event that Parent needs to obtain an audit of the Company Group or Seller for any period ending prior to Closing; provided that the Parent shall make available any Transferred Employees necessary to assist Seller in connection therewith.

4.15 Change of Name or Liquidation. Unless otherwise agreed to by Buyer, (i) Seller shall (or shall cause the relevant members of the Company Group to) change their respective name(s) to a name that does not include "Flow", "Cape Cod", "ProMerchant" or any other permutation thereof, and that is otherwise not a name that may suggest an affiliation of any kind with the Business or Assets or (ii) Seller shall conduct no business under such name(s) other than to wind down and liquidate such members of the Company Group or to discharge its obligations under this Agreement in connection with its indemnification provisions.

4.16 Updated Schedules Delivery. The Parties shall confer and may reasonably agree to updated Schedules, which would amend and replace the Schedules to this Agreement in their entirety, within five (5) Business Days after the date hereof; provided, however, that such updated Schedules shall not cause any change in or addition to any schedule, except for the disclosure schedules setting forth any and all exceptions or supplemental information to the representations and warranties in Article II unless Buyer consents to such changes or additions in writing.

ARTICLE V

Employees and Employee Benefit Plans

5.1 Employee Matters.

(a) Effective as of the Closing Date, Buyer shall offer, or cause its applicable Affiliate to offer, at-will employment to each Business Employee. Each Business Employee who accepts Buyer's or its Affiliate's offer of employment pursuant to this Section 5.1 shall be referred to herein as a "Transferred Employee".

(b) Following the Closing, Seller and its Affiliates shall retain and be responsible for (and shall indemnify and hold the Buyer from and against) (i) any and all Liabilities, whenever arising or occurring, under the Company Benefit Plans (other than any Standalone Plan), (ii) any and all Liabilities relating to the employment, compensation and employee benefits of the Transferred Employees which arise or are incurred prior to the Closing and (iii) any and all Liabilities relating to any Seller employee who is not a Transferred Employee, whenever arising or occurring. Except as set forth in the immediately preceding sentence, Buyer shall be solely

responsible for all Liabilities related to the Transferred Employees that relate exclusively to periods after the Closing Date.

(c) This Section 5.1 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 5.1, expressed or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 5.1. Without limiting the foregoing, no provision of this Section 5.1 will (i) be treated as an amendment to any particular Company Benefit Plan, (ii) prevent Buyer from amending or terminating any of its benefit plans in accordance their terms, (iii) prevent Buyer or its Affiliates, on or after the Closing Date, from terminating the employment of any Transferred Employee, or (iv) confer any rights or remedies (including third-party beneficiary rights) on any current or former director, Business Employee, employee, or individual service provider of Seller, Buyer or any of their respective Affiliates or any beneficiary or dependent thereof or any other Person.

ARTICLE VI

CLOSING CONDITIONS

6.1 Conditions to Obligations of Parent and Buyer. Except as may be waived in writing by Parent and Buyer, the obligations of Parent and Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Buyer of the following conditions at or prior to the Closing:

(a) Governmental Orders. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Law which is in effect and has the effect of making the transactions contemplated by this Agreement unlawful or otherwise restraining or prohibiting consummation of such transactions.

(b) Representations and Warranties. The representations and warranties of Seller contained in Article II shall be true and correct as of the date hereof and as of the Closing Date, as though made on and as of the Closing Date, except (i) that representations and warranties that are made as of a specific date need be true and correct only as of such date and (ii) for breaches and inaccuracies of representations and warranties of Seller other than the Fundamental Representations, the effect of which would not, individually or in the aggregate, result in a Material Adverse Effect.

(c) Covenants. Seller shall have performed and complied with in all material respects all covenants and agreements hereunder required to be performed or complied with by them on or prior to the Closing Date.

(d) Closing Certificate. Seller shall have delivered to Buyer a certificate, executed by an officer of Seller certifying to the satisfaction of the conditions specified in Section 6.1(b) above.

(e) No Material Adverse Effect. Since the date of this Agreement, no Material Adverse Effect shall have occurred and be continuing.

(f) Payoff Letters. Seller shall have delivered or caused to be delivered to Buyer the Payoff Letters providing for the matters set forth in Section 1.10(a)(x).

(g) Key Employees. Each of the Key Employees shall have executed standard employee at-will onboarding documentation, satisfactory to Buyer.

(h) Consents. Seller shall have delivered to Buyer evidence of the consents, assignments, compliance with notices regarding rights of first refusals or similar rights, and other items set forth on Schedule 1.10(a)(vii), in each case, in form and substance reasonably satisfactory to Buyer.

(i) FIRPTA Certificate/IRS Form W-9. Seller shall have delivered to Buyer a certificate pursuant to Treasury Regulations Section 1.1445-2(b) evidencing that Seller is not a foreign person within the meaning of Section 1445 and Section 1446 of the Code, and true and correct copy of Seller's IRS Form W-9.

(j) Due Diligence. Buyer shall be satisfied in its sole discretion with its due diligence review of the Seller, each member of the Company Group, the Business, the Assets, and the Assumed Liabilities.

(k) NASDAQ Approval. Buyer shall have received the NASDAQ Approval.

(l) Other Closings. The closing of the transactions contemplated by the Other Asset Purchase Agreements shall have occurred (or shall occur concurrently with the Closing).

(m) Approval of Secured and Unsecured Creditor of Buyer's Two Credit Facilities. Buyer shall have obtained the consent (or waiver) of Luxor Capital Group, L.P. to close the Agreement as well as to close the Other Asset Purchase Agreements, if Buyer determines that such consent (or waiver) is required.

(n) Board of Director Approval. Parent's Board of Directors shall have approved, in its sole discretion, the closing of the Agreement as well as the closing of the Other Asset Purchase Agreements.

6.2 Conditions to Obligations of Seller. Except as may be waived in writing by Seller, the obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Seller of the following conditions at or prior to the Closing:

(a) Governmental Orders. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Law which is in effect and has the effect of making the transactions contemplated by this Agreement unlawful or otherwise restraining or prohibiting consummation of such transactions.

(b) Representations and Warranties. The representations and warranties of Parent and Buyer contained in Article IV shall be true and correct as of the date hereof and as of the Closing Date, as though made on and as of the Closing Date, except (i) that representations and warranties that are made on and as of a specific date need be true and correct only as of such date and (ii) for breaches and inaccuracies that would not prevent or materially impair or delay consummation by Buyer of the transactions contemplated hereby.

(c) Covenants. Each of Parent and Buyer shall have performed and complied with in all material respects all covenants and agreements hereunder required to be performed or complied with by it on or prior to the Closing Date.

(d) Closing Certificate. Each of Parent and Buyer shall have delivered to Seller a certificate, executed by an officer of Parent or Buyer (as applicable), certifying to the satisfaction of the conditions specified in Section 6.2(b) above.

ARTICLE VII

INDEMNIFICATION

7.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and remain in full force and effect until the Holdback Release Date; provided that the Fundamental Representations shall survive until the date that is four (4) years from the Closing Date. All covenants and agreements of the Parties contained herein which are to be performed prior to the Closing shall terminate at the Closing, except that the covenants and agreements set forth in Section 4.1, shall survive the Closing and remain in full force and effect until the Holdback Release Date. All other covenants and agreements shall survive for the duration of their terms. Notwithstanding anything to the contrary in this Agreement, including Section 7.4, any claim for Fraud may be brought within the applicable statute of limitations and nothing herein shall limit or reduce the amounts recoverable for any such claim. If a Claim Notice has been given by an Indemnified Party to an Indemnifying Party within the applicable limitation period provided for in this Section 7.1, the end of the survival period that would otherwise apply to such claim shall be extended (solely with respect to the claim underlying such Claim Notice) until such later date as such claim has been fully and finally resolved.

7.2 Indemnification by Seller. From and after the Closing, subject to the terms and conditions of this Article VII, Seller shall indemnify and defend Buyer, its Affiliates and its representatives (collectively, the "Buyer Indemnified Parties") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, Buyer Indemnified Parties based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or Breach of any of the representations or warranties of Seller contained in this Agreement (except for representations and warranties made as of a

specific date, the inaccuracy or Breach of which will be determined with reference to such date);

(b) any Breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement; and

(c) the Excluded Liabilities.

7.3 Indemnification by Buyer. From and after the Closing, subject to the terms and conditions of this Article VII, Parent and Buyer shall jointly and severally indemnify and defend Seller, the Owners, their Affiliates and their representatives (collectively, the "Seller Indemnified Parties") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnified Parties based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or Breach of any of the representations or warranties of Parent or Buyer contained in this Agreement as of the Closing Date (except for representations and warranties made as of a specific date, the inaccuracy or Breach of which will be determined with reference to such date);

(b) any Breach or non-fulfillment of any covenant, agreement or obligation to be performed by Parent or Buyer pursuant to this Agreement; and

(c) the Assumed Liabilities.

7.4 Limitation on Indemnification. The party making a claim under this Article VII is referred to as the "Indemnified Party" and the party against whom such claims are asserted under this Article VII is referred to as the "Indemnifying Party." The indemnification provided for in Section 7.2 and Section 7.3 hereof shall be subject to the following limitations:

(a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification under Section 7.2(a) or Section 7.3(a), as the case may be, until the aggregate amount of all Losses suffered in respect of indemnification under Section 7.2(a) or Section 7.3(a) exceeds $75,000 (the "Deductible"), in which event the Indemnifying Party shall be liable for all such Losses in excess of the Deductible.

(b) The aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 7.2(a) or Section 7.3(a), as the case may be, shall not exceed the sum of (x) the Indemnity Escrow Holdback Amount plus (y) the aggregate Market Value of the Indemnity Holdback Shares (the "Cap").

(c) Notwithstanding the foregoing, the limitations set forth in Sections 7.4(a) and (b) above shall not apply to Losses arising out of or resulting from any Breach of the Fundamental Representations; provided that in no event shall the aggregate liability of Seller for all Losses arising under this Agreement exceed the Purchase Price actually received by Seller.

(d) For purposes of this Article VII, calculations of the amount of any Losses arising out of or resulting from any inaccuracy, Breach or non-fulfillment shall be made without regard to any reference to "Material Adverse Effect," "materiality" or any other correlative materiality qualifications.

(e) The amount of any and all Losses under this Article VII shall exclude exemplary, punitive, special, consequential and indirect damages, loss of income or revenue, loss of anticipated or future business or profits, loss of reputation, opportunity cost, diminution in value and Losses based on any type of multiplier (including "multiple of EBITDA," "multiple of profits" or "multiple of cash flow") or other similar valuation methodology, except to the extent actually awarded to a Third Party in an Action brought against an Indemnified Party.

(f) The amount of Losses recoverable from an Indemnifying Party hereunder shall be calculated net of the amount of any insurance proceeds, indemnification payments or reimbursements actually received by the Indemnified Party from Third Parties in respect of such Losses.

7.5 Notice of Claims.

(a) Any Indemnified Party shall, within the limitation period provided for in Section 7.1, give, in the case of indemnification sought by: (i) any Seller Indemnified Party, to Buyer; or (ii) any Buyer Indemnified Party, to Seller, a written notice (a "Claim Notice") that includes a general description of the facts giving rise to the claim for indemnification hereunder that is the subject of the Claim Notice (if and to the extent then known), a good faith estimate of the amount of such claim and a reference to the provision of this Agreement upon which such claim is based along with disclosure of any policy of insurance which may afford coverage for all or part of such claim. A Claim Notice shall be given promptly following the claimant's determination that facts or events give rise to a claim for indemnification hereunder; provided that the failure to give such written notice (i) shall not relieve any Indemnifying Party of its obligations under this Article VII, except to the extent it shall have been actually and materially prejudiced by such failure, and (ii) shall not relieve any Indemnifying Party of any other obligation or liability it may have to any Indemnified Party otherwise than under this Article VII.

(b) An Indemnifying Party shall have sixty (60) days after the receipt of any proper Claim Notice pursuant hereto to: (i) agree to the amount set forth in the Claim Notice (the "Indemnification Amount") and to pay or cause to be paid such amount to such Indemnified Party (A) in the case of a claim by the Seller Indemnified Parties, by wire transfer in immediately available funds, or (B) in the case of a claim by the Buyer Indemnified Parties, (1) by the Buyer and Seller jointly directing the Escrow Agent to release from the Indemnity Escrow Holdback Amount an amount equal to eighty percent (80%) of the Indemnification Amount, and (2) by Seller transferring back to Parent or a nominee thereof (for no consideration) from the Indemnity Holdback Shares the number of shares of Parent Stock equal to (x) twenty percent (20%) of the Indemnification Amount divided by (y) the Market Value as of the date of the Claim Notice; or (ii) provide such Indemnified Party with written notice that it disagrees with the claim set forth in the Claim Notice (the "Dispute Notice"). For a period of sixty (60) days after the giving of any Dispute Notice, a representative of the Indemnifying Party and the Indemnified Party shall negotiate in good faith to resolve the matter. In the event that the controversy is not resolved within sixty (60) days after the date the Dispute Notice is given, the Parties may thereupon proceed to pursue any and all available remedies at law. If the Indemnifying Party agrees to the Claim Notice pursuant to clause (i) above or fails to provide a timely Dispute Notice pursuant to clause (ii) above, then: (x) if the Indemnified Party is a Buyer Indemnified Party, Buyer shall be entitled to the indemnification payment released by the Escrow Agent as contemplated by Section 7.5(b)(i)(B), or (y) if the Indemnified Party is a Seller Indemnified Party, then Buyer shall, using its own immediately available funds, pay Seller the amount set forth in the Claim Notice.

7.6 Third Party Claims.

(a) If a claim by a third Person (including any audit, notice or request for information from a Tax Regulatory Authority) (a "Third Party Claim") is made against an Indemnified Party, and if such Indemnified Party intends to seek indemnity with respect thereto under this Article VII, such Indemnified Party shall promptly notify: (i) Buyer, in the case of indemnification sought by any Seller Indemnified Party; or (ii) Seller, in the case of indemnification sought by any Buyer Indemnified Party, in writing of such claims (a "Third Party Claim Notice"). The Third Party Claim Notice shall include a general description of the facts giving rise to the claim for indemnification hereunder that is the subject of the Third Party Claim Notice, (if and to the extent then known) the amount or an estimate of the amount of such claim and all material documentation relevant to the claim described in the Third Party Claim Notice. A Third Party Claim Notice shall be given promptly following the claimant's determination that facts or events give rise to a claim for indemnification hereunder; provided that in respect of any Action at law or suit in equity by or against a third Person as to which indemnification will be sought shall be given promptly after the Action or suit is commenced; and provided, further, that the failure to give such written notice (i) shall not relieve any Indemnifying Party of its obligations under this Article VII, except to the extent it shall have been actually and materially prejudiced by such failure, and (ii) shall not relieve any Indemnifying Party of any other obligation or liability it may have to any Indemnified Party otherwise than under this Article VII.

(b) The Indemnifying Party may at any time deliver written notice to the Indemnified Party that it intends to undertake, conduct and control, through counsel of its own choosing of recognized standing and competence and at its own expense, the settlement or defense thereof, and the Indemnified Party shall cooperate with it in connection therewith; provided that the Indemnifying Party shall only be entitled to undertake, conduct and control such settlement or defense if it acknowledges, in writing, to the Indemnified Party its obligation to fully indemnify the Indemnified Party hereunder against any Losses that may result from such Third Party Claim (subject to, if applicable pursuant to Section 7.4, the Cap and Deductible). If the Indemnifying Party undertakes to conduct and control the settlement or defense of a Third Party Claim, it shall take all steps reasonably necessary in the settlement or defense of such Third Party Claim, and shall diligently pursue the resolution of such Third Party Claim. Should an Indemnifying Party elect to assume the defense of a Third Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party elects to assume the defense of a Third Party Claim, the Indemnified Party shall have the right to participate in the defense thereof

and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood, however, that the Indemnifying Party shall control the defense. If the Indemnifying Party does not notify the Indemnified Party in writing that it elects to undertake the defense thereof, the Indemnified Party shall have the right to undertake the defense or prosecution of the claim through counsel of its own choice, and the reasonable fees and expenses incurred in connection with such defense or prosecution shall be considered Losses hereunder with respect to the subject matter of such claim, indemnifiable to the extent provided in this Article VII. Notwithstanding the foregoing, the Indemnifying Party shall be entitled to assume the settlement or defense of a Third Party Claim under this Section 7.6(b) only if: (A) the Third Party Claim involves solely monetary damages and (B) to the extent that the Cap applies, the potential Losses relating to such Third Party Claim are less than the Cap.

(c) On the first Business Day following the Holdback Release Date, (i) Buyer and Seller shall jointly instruct the Escrow Agent to release to Seller in accordance with the Escrow Agreement the remaining amount of the Indemnity Escrow Holdback Amount net of the amount of any unresolved or pending claims properly asserted by Buyer prior to the Holdback Release Date ("Unresolved Claims"), in cash, by wire transfer of immediately available funds to the account designated in writing by Seller, and (ii) the remaining number of Indemnity Holdback Shares, net of the number of Indemnity Holdback Shares corresponding to the amount by which the Unresolved Claims exceeds the available balance of the Indemnity Escrow Holdback Amount, shall be released from the Indemnity Holdback Restriction. Buyer or Parent shall cause the record ownership of the released Indemnity Holdback Shares to be in the name of the Seller or in the names and percentage allocations of such other Persons as Seller may request via written notice to Buyer and Parent on a date that is no less than five (5) Business Days prior to the Holdback Release Date, all of whom shall be members of the Seller; provided, that, Buyer, Parent and Seller agree that if Indemnity Holdback Shares are released directly to the members of Seller, each of the parties hereto shall treat each such issuance of shares for all Tax reporting purposes as a transfer to Seller, followed by a transfer by Seller to its members. Thereafter, any remaining Indemnity Escrow Holdback Amount retained by the Escrow Agent and any remaining Indemnity Holdback Shares that continue to be subject to the Indemnity Holdback Restriction with respect to the Unresolved Claims (if any), shall be released by the Escrow Agent or from the Indemnity Holdback Restriction, as applicable, upon resolution of such Unresolved Claims.

(d) Neither Buyer nor Seller shall settle or consent to the entry of judgment of any Third Party Claim without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, withheld or delayed, unless such settlement or judgment (i) does not provide for injunctive or other equitable relief and (ii) will be fully satisfied by the Indemnifying Party.

7.7 Tax Treatment. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

7.8 No Double Recovery. In no event shall the Indemnified Party be entitled under this Agreement to the recovery of the same Loss more than once, regardless of whether the claim for the Loss may be brought under multiple provisions of this Agreement. No amount may be

recovered as a Loss with respect to any particular matter to the extent such amount with respect to such matter was expressly listed on the Closing Statement (as finally determined pursuant to Section 1.9(b)) or specifically taken into account as part of the Purchase Price adjustments under Sections 1.9(b) or 1.9(c).

7.9 Exclusive Remedy. Subject to Section 9.12, the Parties acknowledge, covenant and agree that, from and after the Closing, their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein, shall be pursuant to the indemnification provisions set forth in this Article VII. Nothing in this Section 7.9 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled pursuant to Section 9.12. Notwithstanding anything to the contrary in this Agreement, nothing will prohibit, limit or in any way restrict claims or remedies for Fraud in connection with any breach of any representation, warranty, covenant, agreement or obligation set forth herein (or in any exhibit or schedule hereto or in the Schedules) or otherwise relating to the subject matter of this Agreement.

ARTICLE VIII

TERMINATION

8.1 Termination. This Agreement may be terminated as follows:

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

(b) by either Buyer or Seller if the Closing shall not have occurred on or before September 15, 2021 (the "Outside Date"); provided that the right to terminate this Agreement under this paragraph shall not be available to any Party whose failure to fulfill or comply with any obligation or covenant under this Agreement or contemplated hereby has been the principal cause of, or resulted in, the failure of the Closing to occur on or prior to such date;

(c) by Buyer, in the event that a (i) Material Adverse Effect shall have occurred prior to Closing or (ii) it determines that Closing condition 6.1(j) or 6.1(k) will not be satisfied prior to Closing;

(d) by Buyer, if a breach of this Agreement by Seller results or would result in any of the conditions set forth in Section 6.1(b) not being satisfied and such breach cannot be cured or, if curable, remains uncured within the earlier of (i) 15 days after Seller has received written notice from Buyer of the occurrence of such breach and (ii) the Outside Date; provided that Buyer may not terminate pursuant to this Section 8.1(d) if Seller's breach has been primarily caused by a breach of any provision of this Agreement by Buyer;

(e) by Seller, if a breach of this Agreement by Buyer results or would result in any of the conditions set forth in Section 6.2(b) not being satisfied and such breach cannot be cured or, if curable, remains uncured within the earlier of (i) 15 days after Buyer has

received written notice from Seller of the occurrence of such breach and (ii) the Outside Date; provided that Seller may not terminate pursuant to this Section 8.1(e) if the Buyer's breach has been primarily caused by a breach of any provision of this Agreement by Seller; or

(f) either Buyer or Seller, if any Governmental Authority shall have issued an Order or enacted a Law enjoining or otherwise prohibiting the Closing and such Order or Law shall have become final and nonappealable; provided that the right to terminate this Agreement under this paragraph shall not be available to any Party whose failure to fulfill or comply with any obligation or covenant under this Agreement has been the cause of, or resulted in, the issuance of such nonappealable Order or Law.

8.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 8.1, written notice thereof shall be promptly delivered by the Party seeking termination to the other Parties and such termination shall be immediately effective upon the delivery of such notice by a Party entitled to effect such termination. Upon any such valid termination, (a) each Party will redeliver to the other Parties all documents, work papers and other materials of the other Parties relating to the transactions contemplated hereby, whether obtained before or after the execution of this Agreement, (b) this Agreement shall become void and no Party shall have any further rights, Liabilities or obligations hereunder except with respect to those obligations set forth in the Confidentiality Agreement and Sections 4.7(a), 8.2 and Article IX hereof, which shall survive any such termination, and (c) termination shall not relieve any Party from liability for Fraud or any intentional or willful breaches of this Agreement prior to the date of such termination. An "intentional or willful breach" means a breach or failure to perform, in each case, that is the consequence of an act or omission by a Party with the actual knowledge that the taking of such act or failure to take such act would, or would reasonably be expected to, cause a Breach of this Agreement.

ARTICLE IX

GENERAL PROVISIONS

9.1 Benefit and Assignment. This Agreement may not be assigned in whole or in part by Parent, Buyer or Seller without the prior written consent of the other Parties, whether by merger, operation of law, or otherwise and any purported assignment without such consent shall be void; provided that Buyer may assign any or all of its rights hereunder to one of more of its Affiliates upon written notice of the same to Seller, which assignment shall not relieve Buyer of any of its obligations hereunder. This Agreement shall be binding upon and inure to the sole benefit of the Parties hereto and their respective successors and permitted assigns and is not intended, nor shall be construed, to give any Person, other than the Parties hereto and their respective successors and permitted assigns, any legal or equitable right, remedy or claim hereunder, and other than the rights of the Indemnified Parties pursuant to Article VII.

9.2 Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to

any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Delaware, and without reference to any rules of construction regarding the Party responsible for the drafting hereof. Each Party (a) agrees that any suit, Action or other legal proceeding arising out of this Agreement shall be brought before any federal or state court located in the State of Delaware having subject matter jurisdiction in the event any dispute arises out of this Agreement, (b) consents to the exclusive jurisdiction of any such court in any such suit, Action or proceeding (c) agrees that service of process or notice in any such suit, Action or proceeding shall be effective if delivered in compliance with Section 9.5 hereof, and (d) waives any objection which such Party may have to the laying of venue, personal jurisdiction, *forum nonconveniens* and improper service of process (provided such service of process is in accordance with Section 9.5) of any such suit, Action or proceeding in any such court.

9.3 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE AGREEMENTS CONTEMPLATED HEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, TO THE FULLEST EXTENT PERMITTED BY LAW, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION (INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER AGREEMENTS CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND KNOWINGLY WITH ITS, HIS OR HER, AS THE CASE MAY BE, LEGAL COUNSEL, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.3. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

9.4 Expenses. Except as otherwise provided herein, Seller shall be responsible for and shall pay all costs, liabilities and other obligations incurred by it and, up to and including the Closing, the Business in connection with preparing, negotiating and entering into this Agreement and the performance of and compliance with all transactions, agreements and conditions contained in this Agreement to be performed or complied with by it and, up to and including the Closing, the Business, including legal, accounting and financial advisory and investment banking fees incurred by Seller or, up to and including the Closing, the Business, and each of Parent and Buyer shall be

responsible for and shall pay all costs, liabilities and other obligations incurred by it in connection with preparing, negotiating and entering into this Agreement and the performance of and compliance with all transactions, agreements and conditions contained in this Agreement to be performed or complied with by it, including its legal, accounting and financial advisory and investment banking fees incurred by Parent or Buyer, and all costs, liabilities and other obligations first incurred by the Business after Closing in connection with the performance of and compliance with all transactions, agreements and conditions contained in this Agreement to be performed or complied with by the Business after Closing. For the avoidance of doubt, any provider of legal, accounting, financial advisory or investment banking services or any other provider of professional services of Seller or the Business up to and including the Closing Date may continue to provide services to Seller following the Closing solely at Seller's expense. Notwithstanding the above, in the event the Closing doesn't occur as the result of the failure to satisfy the conditions set forth in Section 6.1(j), Section 6.1(k), or Section 6.1(n), Buyer shall be responsible for 50% of Seller's legal fees incurred in connection with the negotiation of this Agreement up to $30,000.

9.5 Notices. Any and all notices, demands, and communications provided for herein or made hereunder shall be given in writing and shall be delivered personally, by overnight delivery service, by facsimile, by email or sent by certified, registered or express air mail, postage prepaid and shall be deemed given to a Party (i) when actually delivered to such Party, if delivered by hand, (ii) one Business Day after deposited with an overnight delivery service, if delivered by overnight delivery, (iii) upon electronic confirmation of receipt, when facsimile transmitted to such Party to the facsimile number indicated for such Party below (or to such other facsimile number for a Party as such Party may have substituted by notice pursuant to this section) during normal business hours, (iv) if sent by email, upon effectiveness of another delivery method hereunder or (v) five days after mailing if mailed to such Party by registered or certified U.S. Mail (return receipt requested) and addressed to such Party at the address designated below for such Party (or to such other address for such Party as such Party may have substituted by notice pursuant to this section):

(a) If to Seller:

Michael P.J. Gerstein, Esq.
In care of: Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210
Email: michael@flowpayments.com; garie@foleyhoag.com
Attn: Gil Arie

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

Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210
Email: garie@foleyhoag.com; erice@foleyhoag.com
Attn: Gil Arie & Erica Rice

(b) If to Parent or Buyer:

Waitr Holdings, Inc.
214 Jefferson St., Suite 200
Lafayette, LA 70501
Email: Thomas.pritchard@waitrapp.com
Attn: Thomas C. Pritchard

Cape Payments, LLC
214 Jefferson St., Suite 200
Lafayette, LA 70501
Email: Thomas.pritchard@waitrapp.com
Attn: Thomas C. Pritchard

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

Goodwin Procter LLP
601 Marshall St.
Redwood City, CA
Email: DJohanson@goodwinlaw.com
Attn: David E. Johanson

9.6 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all Parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, portable document format or other electronic format complying with the U.S federal ESIGN Act of 2000 (such as DocuSign) shall be effective as delivery of a manually executed counterpart to this Agreement.

9.7 Computation of Time. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday, or any date on which banks in New York City, New York are authorized to be closed, the Party having such privilege or duty may exercise such privilege or discharge such duty on the next succeeding day which is a regular Business Day.

9.8 Amendment, Modification and Waiver. This Agreement may not be modified, amended or supplemented except by mutual written agreement of Parent, Buyer and Seller. Any Party may waive in writing any term or condition contained in this Agreement and intended to be for its benefit; provided that no waiver by any Party, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term or condition.

9.9 Entire Agreement. This Agreement, the agreements contemplated hereby, and the appendices, exhibits and schedules delivered herewith, and the Confidentiality Agreement represent the full and complete agreement of the Parties with respect to the subject matter hereof

and supersede and replace any prior understandings and agreements among the Parties with respect to the subject matter hereof.

9.10 Publicity. None of the Parties shall and, each Party shall cause its Affiliates not to, make or issue any public announcement or press release to the general public with respect to this Agreement or the transactions contemplated by this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that no such consent or prior notice shall be required in connection with any public announcement or press release the content of which is consistent with that of any prior or contemporaneous public announcement or press release by any Party in compliance with this Section 9.10. Nothing in this Section 9.10 shall limit any Party from making any announcements, statements or acknowledgments that such Party is required by applicable Law or the requirements of NASDAQ to make, issue or release (including in connection with the exercise of the fiduciary duties of the board of directors of Parent or with NASDAQ in connection with satisfying the condition set forth in Section 6.1(k)); provided, that, to the extent practicable, the Party making such announcement, statement or acknowledgment shall provide such announcement, statement or acknowledgment to the other Parties prior to release and consider in good faith any comments from such other Parties.

9.11 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. If it is ever held by any Governmental Authority of competent jurisdiction that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, such restriction shall be enforced to the maximum extent permitted by Law and, to the extent necessary, the Parties hereto will amend or otherwise modify this Agreement to replace any provision contained herein that is held invalid or unenforceable with a valid and enforceable provision giving effect to the original intent of the Parties.

9.12 Specific Performance. The Parties agree that irreparable damage for which monetary damages, even if available, may not be an adequate remedy, may occur in the event that any Party does not perform its obligations under the provisions of this Agreement (including failing to take such actions as are required of them) or otherwise Breaches this Agreement. The Parties acknowledge and agree that (a) the Parties shall be entitled to an injunction, specific performance, or other equitable relief, to prevent Breaches of this Agreement and to enforce specifically the terms and provisions hereof, without proof of damages, prior to the valid termination of this Agreement in accordance with Section 8.1, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, none of Parent, Buyer or Seller would have entered into this Agreement. Each Party agrees that it shall not oppose the granting of specific performance and other equitable relief on the basis that the other Parties have an adequate remedy at Law or that an award of specific performance is not an appropriate remedy for any reason at Law or equity. The Parties acknowledge and agree that any Party seeking an injunction to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section shall not be required to provide any bond or other security in connection with any such injunction.

9.13 Interpretation.

(a) References to “dollars” or “$” are to U.S. dollars.

(b) This Agreement was prepared jointly by the Parties hereto and no rule that it be construed against the drafter will have any application in its construction or interpretation.

(c) Whenever the words “ordinary course of business” are used in this Agreement, they shall be deemed to be followed by the words “consistent with past practice.”

(d) Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, “herein,” “hereto,” “hereof,” “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof; (ii) the word “including” means “including, but not limited to”; (iii) masculine gender shall also include the feminine and neutral genders, and vice versa; (iv) words importing the singular shall also include the plural, and vice versa; (v) the word “or” is disjunctive but not necessarily exclusive; and (vi) accounting terms which are not otherwise defined in this Agreement shall have the meanings given to them under the Accounting Principles.

(e) Unless the context of this Agreement otherwise requires, references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(f) Whenever reference is made to a “partner” or “member” that is an entity, each such term shall be deemed to include the ultimate holders of such entity.

(g) The word “day” means calendar day unless Business Day is expressly specified.

9.14 Headings. The headings contained in this Agreement are inserted for convenience only and shall not be considered in interpreting or construing any of the provisions contained in this Agreement.

9.15 Owner Guarantee. To induce Buyer to enter into this Agreement, each Owner hereby absolutely, unconditionally and irrevocably guarantees to Buyer the due, complete and punctual payment observance, performance and discharge of the payment obligations of Seller pursuant to this Agreement, including under Article VII (the “Obligations”). Buyer may, in its sole discretion, bring and prosecute a separate Action against the Owners for the full amount of the Obligations, regardless of whether any Action is brought against Seller, or whether Seller is joined in any such action. Buyer shall not be obligated to file any Action in relation to the Obligations in the event that Seller becomes subject to an insolvency, bankruptcy, reorganization or similar proceeding, and the failure of Buyer to so file shall not affect the Owners’ obligations hereunder. In the event that any payment in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, the Owners shall remain liable hereunder with respect to the Obligations as if such payment had not been made. This Section 9.15 is an unconditional guarantee of payment and not of collection. Each Owner agrees that Buyer may at any time and from time to time, without notice to or further consent of any Owner, extend the time

of payment of any Obligation, and may also enter into any agreement with Seller or any other Person interested in the transactions contemplated by this Agreement for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, without in any way impairing or affecting the Owners' obligations under this Section 9.15. Each Owner agrees that the Obligations hereunder shall not be released or discharged, in whole or in part, or otherwise affected by: (i) the failure or delay of Buyer to assert any claim or demand or to enforce any right or remedy against the Owners or Seller or any other Person interested in the transactions contemplated by this Agreement; (ii) any change in the time, place or manner of payment of the Obligations; (iii) the addition, substitution or release of any Person now or hereafter liable with respect to the Obligations, to or from this Section 9.15, this Agreement, or any related agreement or document; (iv) any change in the corporate existence, structure or ownership of Seller or any other Person now or hereafter interested in the transactions contemplated by this Agreement; (v) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Seller or any other Person now or hereafter interested in the transactions contemplated by this Agreement; (vi) the existence of any claim, set-off or other right which Seller or any Owner may have at any time against Buyer, whether in connection with any Obligation or otherwise; or (vii) the adequacy of any other means Buyer may have of obtaining payment of the Obligations. Notwithstanding anything to the contrary contained in this Section 9.15, the parties hereto hereby agree that, to the extent Seller is relieved of any of its obligations under this Agreement, the Owners shall be similarly relieved of its corresponding Obligations under this Section 9.15 solely in respect of such relieved obligations. The obligations of the Owners under this Section 9.15 shall be several, and not joint and several, in accordance with each Owner's Pro-Rata Share.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date set forth in the first paragraph hereof.

SELLER:
Cape Cod Merchant Services LLC

By: /s Brett Husak, Managing Partner

By: /s/ Brad Anderson, Manager

OWNERS:

_____

Brett Husak

By: /s/ Brett Husak

Brad Anderson

By: /s/ Brad Anderson

PARENT:
Waitr Holdings, Inc.

By: /s/ Leo Bogdanov
Name: Leo Bogdanov
Title: Chief Financial Officer

BUYER:
Cape Payments, LLC

By: /s/ Leo Bogdanov
Name: Leo Bogdanov
Title: Chief Financial Officer

DEFINITIONS

The following terms, as used in this Agreement, shall have the following meanings:

"Accounting Principles" means the accounting principles, practices and methodologies set forth in Exhibit A.

"Acquired Agreements" has the meaning set forth in Section 1.1(a).

"Acquired IP" has the meaning set forth in Section 1.1(b).

"Acquired Leases" has the meaning set forth in Section 1.1(c).

"Acquired Seller Assets" has the meaning set forth in Section 1.1(d).

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, audit, notice of violation, proceeding, Litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"Active Agreement" means any Contract wherein Seller, or any member of the Company Group, has received any compensation related to such agreement, or paid any compensation related to such agreement, within the six (6) month period immediately preceding the Closing Date.

"Adjustment Holdback Amount" means $210,000.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Affiliate Contract" has the meaning set forth in Section 2.17.

"Aggregate Consideration" has the meaning set forth in Section 1.14.

"Agreement" has the meaning set forth in the Preamble.

"Ancillary Agreements" means, collectively, (i) the Bills of Sale, (ii) the Assignment and Assumption Agreements, (iii) the Escrow Agreement, and (iv) the Indemnity Holdback Share Pledge.

"Anti-Bribery Laws" has the meaning set forth in Section 2.18(a).

"Anti-Money Laundering Laws" means laws, regulations, rules or guidelines relating to money laundering, including, without limitation, financial recordkeeping, reporting requirements and anti-money laundering program requirements, which apply to the Business, such as, without

limitation, the Bank Secrecy Act of 1970, as amended, and the implementing regulations of the U.S. Treasury Department's Financial Crimes Enforcement Network, the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, the U.S. Currency and Foreign Transaction Reporting Act of 1970, as amended, the U.S. Money Laundering Control Act of 1986, as amended, the Annunzio-Wylie Anti-Money Laundering Act of 1992, as amended and all money laundering-related laws of other jurisdictions where Seller or any of its Subsidiaries conduct business or own assets, and any related or similar law issued, administered or enforced by any Governmental Authority.

"Apportioned Obligations" has the meaning set forth in Section 4.11.

"Assets" has the meaning set forth in Section 1.1.

"Assignment and Assumption Agreements" means, collectively, the Agreements Assignment and Assumption Agreement, the IP Assignment and Assumption Agreement, the Lease Assignment and Assumption Agreement, and the Other Assumed Liabilities Assignment and Assumption Agreement.

"Assumed Liabilities" has the meaning set forth in Section 1.3.

"Base Cash Consideration" has the meaning set forth in Section 1.6(a).

"Benefit Plan" means all material "employee benefit plans," as defined in Section 3(3) of ERISA, whether or not subject to ERISA (collectively, "Benefit Plans"), including each Contract, plan, program, practice, arrangement, collective bargaining agreement, or other arrangement (whether written or unwritten) providing for severance, salary continuation, equity or equity-based compensation, profits interest, stock options or stock-purchase, bonus, profit-sharing, incentive or deferred compensation, retention, change in control, vacation or other paid-time-off, disability, health or welfare benefits, sick pay, perquisite or fringe benefits, employment or consulting, pension, retirement or supplemental retirement benefits or other compensation or employee benefits or remuneration of any kind., in each case, which the Company Group or any ERISA Affiliate sponsors, maintains or contributes to, or provides benefits under or for which any potential Liability or obligation is borne, by a member of the Company Group or any ERISA Affiliate and which covers or provides benefits under or through such plan, program or arrangement to any Business Employee or former employee of the Business (or their eligible dependents), (collectively, the "Company Benefit Plans").

"Bills of Sale" has the meaning set forth in Section 1.10(a)(i).

"Books and Records" means the books, records, manuals and other materials (in any form), including financial and accounting records, records maintained at the headquarters of the Business, advertising, catalogues, sales and promotional materials, price lists, correspondence, customer, mailing and distribution lists, referral sources, photographs, production data, purchasing materials and records, personnel records, research and development files, records, data and laboratory books,

service and warranty records, equipment logs, operating guides and manuals, sales order files and litigation files.

"Breach" means any breach of, default (or an event which, with notice or lapse of time or both, would constitute a default) under or failure to perform or comply with, any covenant, provision, term or other obligation or right.

"Business" means payment processing operations pre-Closing.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized by Law to close.

"Business Employee" means each employee of Seller or any of its Affiliates who wholly or primarily provides services to the Business and whose name is set forth on Schedule 2.14(a), as it may be updated from time to time in accordance with this Agreement.

"Business Registered Intellectual Property" has the meaning set forth in Section 2.9(a).

"Buyer" has the meaning set forth in the Preamble.

"Buyer Indemnified Parties" has the meaning set forth in Section 7.2.

"Calculation Time" means 11:59 p.m. on the day prior to the Closing Date.

"Cap" has the meaning set forth in Section 7.4(b).

"Cash" means the sum of the fair market value (expressed in United States dollars) of all cash and cash equivalents of any kind (including without limitation marketable securities and short term investments), excluding restricted cash, determined in accordance with the Accounting Principles. Cash shall be calculated net of issued but uncleared checks and drafts and include checks and drafts deposited for the account of Seller, including deposits in transit.

"Cash Consideration" has the meaning set forth in Section 1.6(a).

"Claim Notice" has the meaning set forth in Section 7.5.

"Closing" has the meaning set forth in Section 1.8.

"Closing Balance Sheet" means the unaudited consolidated balance sheet of the Business as of the Calculation Time, reflecting the Assets and the Assumed Liabilities, prepared in accordance with the Business's past accounting practices and the Accounting Principles.

"Closing Cash" means the aggregate amount of Cash held by Seller and any other member of the Company Group or otherwise included in the Assets.

"Closing Cash Payment" shall have the meaning set forth in Section 1.7(a).

"Closing Date" has the meaning set forth in Section 1.8.

"Closing VWAP" means the average VWAP of Parent Stock (rounded to the nearest one-hundredth of one cent) for the five (5) consecutive trading days ending the day prior to the Closing Date.

"Closing Working Capital" means (i) current assets included in the Assets minus (ii) current liabilities included in the Assumed Liabilities, each as of the Calculation Time, as calculated and defined in accordance with the Accounting Principles and the illustrative calculation of Closing Working Capital set forth in Exhibit B.

"Closing Working Capital Deficiency Amount" means, if the Closing Working Capital is less than the Target Closing Working Capital, (i) the Target Closing Working Capital minus (ii) the Closing Working Capital.

"Closing Working Capital Excess Amount" means, if the Closing Working Capital is greater than the Target Closing Working Capital, (i) the Closing Working Capital minus (ii) the Target Closing Working Capital.

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

"Company Data" has the meaning set forth in Section 2.9(j).

"Company Group" means Seller and its Subsidiaries (if any), collectively.

"Company IT Systems" means all information technology and computer systems (including computer software, information technology and telecommunication hardware and other hardware and equipment) used for or relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information whether or not in electronic format, that are owned, leased or licensed by the Company Group or provided as a service to the Company Group and used in the Business in each case to the extent controlled by the Company Group, including all of the foregoing that are used by the Company to make Intellectual Property Assets available to customers.

"Competitive Activity" means, either individually or in partnership, jointly or in conjunction with any other Person, firm, association, syndicate, trust, franchise, company or corporation, whether as owner, partner, officer, director, investor, shareholder, beneficiary, franchisee, licensee, employee, consultant, agent, lender or in any manner whatsoever, engaging in, carrying on or be otherwise concerned with, employed by, associated with, or have any interest in, managing, advising, lending money to, guaranteeing the debts or obligations of, rendering services or advice to, in whole or in part, any Person that conducts a business that is competitive with the Business as currently conducted; provided, however a Competitive Activity shall not preclude any Person from participating as a stockholder, member, or investor in a business entity through the ownership of not more than a five percent (5%) passive interest in a public or private company; and provided further, however, that 33 Operations Inc. ("33 Operations") shall not be deemed to conduct a business that is competitive with the Business for the purposes of this Agreement provided that Brett Husak does not refer any business to, nor solicit any business from,

this entity while he is an employee of Buyer or an Affiliate of Buyer unless otherwise approved in writing by Buyer.

"Confidentiality Agreement" means that certain Confidentiality Agreement by and between Waitr Holdings Inc. and Flow Payments LLC, Cape Cod Merchant Services LLC, and ProMerchant LLC, dated as of January 19, 2021, as amended.

"Contaminants" has the meaning set forth in Section 2.9(k).

"Contracts" means, with respect to any Person, any written or oral contracts, agreements, leases, indentures, insurance policies, commitments, settlements, or other obligations, including all amendments and modifications thereto, to which such Person is a party or by which such Person is bound or to which any of such Person's assets or properties is subject.

"Creditor's Rights Exception" has the meaning set forth in Schedule 2.2(a).

"Deductible" has the meaning set forth in Section 7.4(a).

"Dispute Notice" has the meaning set forth in Section 7.5(b).

"Employees" means current or former employees employed (or formerly employed) in the operation of the Business.

"Encumbrances" means, any encumbrance, charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, deed of trust, hypothecation, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, conditional sale or restriction on transfer of title, including any restriction on use, voting (in the case of any security or equity interest), receipt of income or exercise of any other attribute of ownership, whether imposed by agreement, Law, equity or otherwise.

"Environmental Law" means any law, code, license, permit, authorization, approval, consent, common law, legal doctrine, requirement or agreement with any Governmental Authority relating to (i) the protection, preservation or restoration of the environment (including air, water, vapor, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, or (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of hazardous substances.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended

"ERISA Affiliate" means all Persons (whether or not incorporated) that are or would have ever been treated with Seller as a "single employer" within the meaning of Section 4001(b) of ERISA or Section 414 of the Code.

"Escrow Agent" means Bank of America, or such other similar financial institution agreed to by the Buyer and the Seller.

"Escrow Agreement" means the escrow agreement to be entered into at Closing with the Escrow Agent in a form mutually agreed by and among Buyer, Seller and the Escrow Agent.

"Estimated Cash Consideration" has the meaning set forth in Section 1.9(a).

"Estimated Closing Balance Sheet" has the meaning set forth in Section 1.9(a).

"Estimated Closing Cash" has the meaning set forth in Section 1.9(a).

"Estimated Closing Statement" has the meaning set forth in Section 1.9(a).

"Estimated Closing Working Capital" has the meaning set forth in Section 1.9(a).

"Estimated Closing Working Capital Deficiency Amount" has the meaning set forth in Section 1.9(a).

"Estimated Working Capital Excess Amount" has the meaning set forth in Section 1.9(a).

"Estimated Working Capital Deficiency Amount" has the meaning set forth in Section 1.9(a).

"Estimated Working Capital Excess Amount" has the meaning set forth in Section 1.9(a).

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

"Excluded Assets" has the meaning set forth in Section 1.2.

"Excluded Liabilities" has the meaning set forth in Section 1.4.

"Federal Securities Laws" means the Exchange Act, the Securities Act and the rules and regulations promulgated thereunder

"Final Closing Statement" has the meaning set forth in Section 1.9(b).

"Financial Statements" means (i) the unaudited consolidated financial statements (including balance sheets and income statements) of the Seller for the fiscal year ended December 31, 2020, and (ii) the unaudited consolidated financial statements (including balance sheets and income statements) of the Seller for the six-month period ended June 30, 2021.

"Fraud" with respect to any Person shall mean actual and intentional common law fraud.

"Fundamental Representations" means the representations and warranties of Seller set forth in Section 2.1 (Organization and Qualification), Section 2.2 (Contemplated Transactions General Compliance), Section 2.8(a) (Title to Assets, etc.), Section 2.15 (Taxes), and Section 2.19 (Brokers' Fees).

"GAAP" means United States generally accepted accounting principles, as in effect at the date of preparation of any relevant statement, document or analysis.

"Governmental Authority" means the government of the United States or any foreign jurisdiction, any state, county, municipality or other governmental or quasi-governmental unit, or any agency, board, bureau, instrumentality, department or commission (including any court or other tribunal) of any of the foregoing, any arbitrator or arbitral body or any self-regulatory authority with similar powers.

"Governmental Filings" has the meaning set forth in Section 2.2(d).

"Holdback Release Date" means the date that is twelve (12) months from the Closing Date.

"Inbound Licenses" has the meaning set forth in Section 2.9(c).

"Indebtedness" means, without duplication and with respect to any member of the Company Group, all (a) indebtedness for borrowed money, including drawings under lines of credit, provided by any member, officer, employee or Third Party, (b) obligations for the deferred purchase price of property or services, including earnout and contingent payments, (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments, (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement, (e) capital lease obligations, (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions, (g) all defined benefit pension, multiemployer pension, post-retirement health and welfare benefit, accrued annual or other bonus obligations, any unpaid severance liabilities currently being paid or payable in respect of employees and service providers of the Company or any of its Subsidiaries who terminated employment or whose services to the Company or any of its Subsidiaries have ceased (as applicable) prior to the Closing and deferred compensation liabilities of the Company or any of its Subsidiaries, together, in each case, with any associated employer payroll taxes (h) guarantees made by a member of the Company Group on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (g), and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (h).

"Indemnification Amount" has the meaning set forth in Section 7.5(b).

"Indemnified Party" has the meaning set forth in Section 7.4.

"Indemnifying Party" has the meaning set forth in Section 7.4.

"Indemnity Escrow Holdback Amount" means the amount that is eighty percent (80%) of the Indemnity Holdback Amount.

"Indemnity Holdback Amount" means $300,000.

"Indemnity Holdback Restriction" has the meaning set forth in Section 1.9(d).

"Indemnity Holdback Shares" means the number of shares of Parent Stock determined by dividing (x) twenty percent (20%) of the Indemnity Holdback Amount by (y) the Closing VWAP.

"Indemnity Holdback Share Pledge" has the meaning set forth in Section 1.9(d).

"Independent Accounting Firm" has the meaning set forth in Section 1.11.

"Insurance Policies" has the meaning set forth in Section 2.16(a).

"Intellectual Property Assets" means all Intellectual Property relating to or used in connection with the Business' operations (including rights and remedies in respect of past, present and future infringements thereof) that is either (a) owned by Seller or a member of the Company Group or (b) used by Seller or a member of the Company Group in operating the Business.

"Intellectual Property" means all intellectual property rights arising anywhere in the world in or under: registered and unregistered trademarks and applications for registration of same, service marks, trade names, logos, slogans, trade dress, URLs, domain names and other indicators of source (and all goodwill associated with any of the foregoing); copyrights, copyright registrations and applications for copyright registration, including any copyrights arising in computer software or corollary database rights, and mask work rights; patents, patent applications (including reissues, divisions, continuations, continuations in part and extensions); inventions, invention disclosures, trade secrets, formulae, processes, methodologies, know-how and any other intellectual property or proprietary rights.

"IP Assignment and Assumption Agreements" has the meaning set forth in Section 1.10.

"IT Infrastructure" has the meaning set forth in Section 2.9(i).

"Key Employees" means each of the employees listed on Schedule 1-E hereto.

"Knowledge" means, (a) when applied to Buyer, the actual knowledge of Carl Grimstad, Thomas Pritchard or Leo Bogdanov, and (b) when applied to Seller, the actual knowledge of Brett Husak.

"Latest Balance Sheet" means the unaudited consolidated balance sheet of Seller as of June 30, 2021.

"Latest Balance Sheet Date" means June 30, 2021.

"Laws" means, collectively, all federal, state, local, municipal, foreign or international (including multi-national) constitutions, laws, statutes, ordinances, rules, regulations, codes, order, treaties or principles of common law, judgment or decree or other pronouncement of any Governmental Authority.

"Lease" has the meaning set forth in Section 2.8(c).

"Lease Assignment and Assumption Agreement" has the meaning set forth in Section 1.10.

"Leased Property" has the meaning set forth in Section 2.8(c).

"Liabilities" or, individually, "Liability" means, with respect to any Person, any debt liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested executory, determined, and whether or not the same is required to be accrued on the financial statements of such Person.

"Litigation" means any claim, action, arbitration, audit, hearing, investigation, litigation, appeal, suit, or other proceeding (whether civil, criminal, administrative, judicial, or investigative, whether formal or informal, whether public or private) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"Losses" means all losses, claims, damages, settlements, judgments, awards, fines, fees (including reasonable attorneys' fees), charges, liabilities, penalties, Taxes and costs and expenses (including reasonable costs of investigation, remediation or other response actions) of any nature.

"Market Value" means, as of any date, the VWAP for the five consecutive trading days ending on the trading day immediately prior to such date.

"Material Adverse Effect" means any effect, change, event, result, occurrence, state of facts, circumstance or development that, individually or in the aggregate has had or could reasonably be expected to have a material adverse effect on the Business, Assets, Assumed Liabilities, operations or results of operations of the Business or condition (financial or otherwise) of the Business taken as a whole; provided that none of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect under this definition: any adverse change, event, development or effect arising from or relating to (i) general business, political or economic conditions affecting the industry in which the Business operates, (ii) acts of war, sabotage, military actions armed hostilities or terrorism, (iii) changes in financial, banking or securities markets, (iv) any changes in Laws or GAAP or the enforcement or interpretation thereof, (v) any change relating to the identity of, or facts and circumstances relating to, Buyer and including any actions by customers, suppliers or personnel, (vi) any action taken by Buyer and any of its Affiliates, agents or representatives expressly required by this Agreement, (vii) act of God including any pandemic, hurricane, flood, tornado, earthquake or other natural disaster or any other force majeure event, (viii) any failure to meet internal or published projections, estimates or forecasts of revenues, earnings, or other measures of financial or operating performance for any period (provided that the underlying causes of such failures shall not be excluded) or (ix) the taking of any action required to be taken by this Agreement, except in the case of the foregoing clauses (i) through (iv) to the extent such change, event, development or effect has a disproportionate adverse impact on the Business in a disproportionately adverse manner relative to other companies in the industries and markets in which the Business operates.

"Material Contracts" has the meaning set forth in Section 2.7(a).

"NASDAQ" means The Nasdaq Stock Market LLC.

"NASDAQ Approval" means that NASDAQ has confirmed or acknowledged to the sole satisfaction of Buyer, that the closing of this Agreement and the Other Asset Purchase Agreements will not violate or conflict with the continued listing requirements or corporate governance policies of NASDAQ to maintain the listing of Parent common stock or otherwise jeopardize the continued listing of the Parent common stock.

"Non-Indemnity Holdback Shares" means the Shares other than the Indemnity Holdback Shares.

"Objection Notice" has the meaning set forth in Section 1.9(b).

"Open Source Software" means any software (in source or object code form) that is subject to (i) a license or other agreement commonly referred to as an open source, free software, copyleft or community source code license (including but not limited to any code or library licensed under the GNU Affero General Public License, GNU General Public License, GNU Lesser General Public License, BSD License, Apache Software License, or any other public source code license arrangement) or (ii) any other license or other agreement that requires, as a condition of the use, modification or distribution of software subject to such license or agreement, that such software or other software linked with, called by, combined or distributed with such software be (a) disclosed, distributed, made available, offered, licensed or delivered in source code form, (b) licensed for the purpose of making derivative works, or (c) redistributable at no charge, including without limitation any license defined as an open source license by the Open Source Initiative as set forth on www.opensource.org.

"Order(s)" means all decisions, injunctions, writs, guidelines, orders, arbitrations, awards, judgments, subpoenas, verdicts or decrees entered, issued, made or rendered by any Governmental Authority.

"Other Asset Purchase Agreements" means the asset purchase agreements with respect to ProMerchant LLC and Flow Payments, LLC.

"Other Assumed Liabilities Assignment and Assumption Agreement" has the meaning set forth in Section 1.10.

"Outbound Licenses" has the meaning set forth in Section 2.9(c).

"Outside Date" has the meaning set forth in Section 8.1(b).

"Owner" means each of Brett Husak and Brad Anderson.

"Parent" has the meaning set forth in the Preamble.

"Parent Stock" has the meaning set forth in Section 1.6(b).

"Party" and "Parties" have the meaning set forth in the Preamble.

"Payoff Amount" has the meaning set forth in Section 1.7(b).

"Payoff Letters" has the meaning set forth in Section 4.4.

"Permits" means, collectively, governmental, regulatory and administrative permits, approvals, certifications, authorizations, licenses, franchises, orders, registrations, and accreditations.

"Permitted Encumbrances" means (a) Encumbrances for Taxes not yet due and payable, (b) mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business, (c) Encumbrances arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the Business, or (d) non-exclusive licenses granted in the ordinary course of business.

"Person" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Personal Information" means all information concerning an identified or identifiable natural person.

"Post-Closing Tax Period" has the meaning set forth in Section 4.11.

"Pre-Closing Tax Period" has the meaning set forth in Section 4.11.

"Privacy Commitments" has the meaning set forth in Section 2.9(j).

"Pro-Rata Share" means 90% with respect to Brett Husak, 10% with respect to Brad Anderson.

"Purchase Price" has the meaning set forth in Section 1.6.

"Sale Event" has the meaning set forth in Section 1.12(f).

"Schedules" means the disclosure schedules delivered by (i) Seller to Buyer no later than five (5) Business Days after the date hereof setting forth any and all exceptions or supplemental information to the representations and warranties contained in Article II and containing certain other disclosure as referenced throughout this Agreement and (ii) Buyer to Seller on the date hereof setting forth any and all exceptions or supplemental information to the representations and warranties contained in Article III and containing certain other disclosure as referenced throughout this Agreement.

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

"SEC Reports" has the meaning set forth in Section 3.7.

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

"Seller" has the meaning set forth in the Preamble.

"Seller Indemnified Parties" has the meaning set forth in Section 7.3.

"Seller Member Approval" means the consent of all of the holders of the membership interests of the Seller under the Seller Operating Agreement to approve and adopt, as the case may be, this Agreement, the Ancillary Agreements and the other transactions contemplated hereby, in each case, in accordance with the Seller Operating Agreement, and which shall include a waiver in accordance with applicable Law by such holders of any appraisal, dissenters' or similar rights that may be available to such holders in connection with this Agreement, the Ancillary Agreement and/or the other transactions contemplated hereby.

"Seller Operating Agreement" means Seller's Operating Agreement as in effect at the time of Closing.

"Shares" shall have the meaning set forth in Section 1.6(b).

"Standalone Plan" means any Benefit Plan that is sponsored, maintained or contributed to or required to be contributed to solely by one or more of the members of the Company Group and in which solely Business Employees are participants.

"Subsidiaries" means each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing at least 50% of the outstanding voting stock or other equity interests.

"Target Closing Working Capital" means $210,000.

"Tax" means any income, gross receipts, license, payroll, employment, franchise, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, duties, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax of any kind whatsoever (and any interest, penalty, addition or additional amount thereon) imposed, assessed or collected by or under the authority of any Governmental Authority and any liability for the payment of any of the foregoing as a successor, transferee or otherwise.

"Tax Return" means any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority (including any supplement or attachment thereto and any amendment thereof) in connection with the determination, assessment, collection or payment of any Tax or in connection with the

administration, implementation or enforcement of or compliance with any Laws relating to any Tax.

"Territory" has the meaning set forth in Section 4.8(a).

"Third Party" means a Person that is not a party to this Agreement.

"Third Party Claim" has the meaning set forth in Section 7.6(a).

"Third Party Claim Notice" has the meaning set forth in Section 7.6(a).

"Transaction Expenses" means any investment banking, accounting, attorney, other professional fees or other expenses incurred by Seller or any other member of the Company Group in connection with the negotiation, preparation, execution, delivery and consummation of this Agreement or any other agreement contemplated hereby and the transactions contemplated hereby and thereby.

"Transfer Taxes" means any sales, use, stock transfer, real property transfer, real property gains, transfer, stamp, registration, documentary, recording or similar duties or Taxes (together with any interest thereon, penalties, fines, costs, fees, additions to Tax or additional amounts with respect thereto) incurred in connection with the transactions contemplated by this Agreement.

"Transferred Employee" has the meaning set forth in Section 5.1(a).

"Unresolved Claims" has the meaning set forth in Section 7.6(c).

"VWAP" means, for any trading day, the volume weighted average price per share of Parent Stock on the NASDAQ (as reported by Bloomberg L.P. or, its successor, or, if not available, by another authoritative source mutually agreed by Buyer and Seller) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day.

"WARN Act" means the U.S. Worker Adjustment and Retraining Notification Act, and any other similar applicable Law.

Exhibit 10.2

ASSET PURCHASE AGREEMENT

DATED AS OF AUGUST 9, 2021

BY AND AMONG

WAITR HOLDINGS, INC.,

CAPE PAYMENTS, LLC,

FLOW PAYMENTS LLC,

EASTHAM HOLDINGS LLC,

AND

PROMERCHANT LLC

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of August 9, 2021, by and among Waitr Holdings Inc., a Delaware corporation ("Parent"), Cape Payments, LLC, a Delaware limited liability company ("Buyer"), Flow Payments LLC ("Seller"), and solely for purposes of Section 4.8 and Section 9.15, each of the undersigned Owners. Parent, Buyer and Seller are sometimes referred to collectively as the "Parties" and individually as a "Party." Except as otherwise set forth herein, capitalized terms used but not defined herein shall have the meaning specified in Appendix A.

RECITALS

A. The Company Group is engaged in the Business.

B. Buyer wishes to purchase from Seller, and Seller wishes to sell, assign and transfer to Buyer, certain assets and properties of Seller, upon the terms and subject to the conditions set forth herein.

C. Buyer has agreed to assume certain liabilities of Seller, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, based upon the above premises and in consideration of the mutual representations, warranties, covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I

PURCHASE AND SALE

1.1 Purchase of Assets. Subject to the terms and conditions hereof, at the Closing Seller will (or will cause another member of the Company Group to) sell, transfer, assign and deliver to Buyer (or an Affiliate of Buyer nominated by Buyer), and Buyer (or such Affiliate of Buyer) will purchase from Seller (or such other member of the Company Group), all right, title and interest of Seller (or such other member of the Company Group) in the following assets :

(a) the Agreements set forth in Schedule 1-A, including rights to receive payment, goods or services and to assert claims and take other actions thereunder, of any and all Active Agreements (the "Acquired Agreements");

(b) the Intellectual Property Assets, including the Intellectual Property set forth in Schedule 1-B (collectively, the "Acquired IP");

(c) the Leases set forth in Schedule 1-C (the "Acquired Leases"); and

(d) all other properties, assets and rights of every nature, whether real, personal, tangible, intangible or otherwise and whether now existing or hereinafter acquired, owned (directly or indirectly) by the Company Group and relating to or used or held for use in

connection with the Business except for the Excluded Assets (the "Acquired Seller Assets" and, together with the Acquired Agreements, the Acquired IP, and the Acquired Leases, the "Assets").

Subject to the terms and conditions hereof, at Closing, the Assets shall be transferred to Buyer free and clear of all liabilities, obligations, liens and Encumbrances excepting only Assumed Liabilities and Permitted Encumbrances.

1.2 Excluded Assets. Notwithstanding anything to the contrary in Section 1.1 or elsewhere in the Agreement, Seller will retain and not sell transfer, assign or deliver, and Buyer will not purchase or acquire, the assets set forth in Schedule 1-D (the "Excluded Assets").

1.3 Assumption of Liabilities. Subject to the terms and conditions hereof, at the Closing Buyer shall assume and agree to pay, perform, assume and discharge when due the following liabilities existing at or arising on or after the Closing Date (collectively, the "Assumed Liabilities"):

(a) all liabilities relating to the Assets, including trade and other accounts payable as set forth in the Estimated Closing Statement, that have been incurred in the ordinary course of business and are reflected on the Estimated Closing Balance Sheet included in the Estimated Closing Statement;

(b) all Taxes imposed with respect to, arising out of, or relating to the operation of the Business or the ownership of the Assets on or following the Closing Date;

(c) all Liabilities arising after the Closing in respect of the Contracts and Governmental Approvals included in the Assets (other than Liabilities attributable to any failure by the Company Group to comply with the terms thereof prior to the Closing), including, for the avoidance of doubt, Seller's duties to pay residual compensation to Seller's agents and affiliates (to the extent such duties arise under such Contracts and are not the result of a breach or failure to perform by the Company Group); and

(d) all Liabilities in respect of Transferred Employees arising after the Closing, other than any Liabilities retained by Seller or its Subsidiaries pursuant to Section 5.1.

1.4 Excluded Liabilities. Except as set forth in Section 1.3 or any other provision hereof, Buyer shall not assume any Liabilities of any kind whatsoever (including Taxes of Seller or any Subsidiary of Seller, except as provided in Section 4.10 (Transfer Taxes) and Section 4.11 (Apportioned Obligations) hereof) relating to or arising out of the operation of the Business or the ownership of the Assets on or prior to the Closing other than the Assumed Liabilities (the "Excluded Liabilities"), including, without limitation, (a) any Liabilities in respect of Transaction Expenses, or (b) any Liabilities in respect of Indebtedness.

1.5 Consent of Third Parties. Notwithstanding anything to the contrary herein, this Agreement shall not constitute an agreement to assign or transfer any interest in any Permit or Contract or any claim or right arising thereunder if such assignment or transfer without the consent or approval of a Third Party would constitute a Breach thereof or affect adversely the rights of

Buyer thereunder, and any such transfer or assignment shall be made subject to such consent or approval being obtained. In the event any such consent or approval is not obtained prior to Closing the Closing shall occur without any adjustment to the Purchase Price and Seller shall use commercially reasonable efforts to obtain any such consent or approval after the Closing, and Seller will cooperate with Buyer in any lawful and economically feasible arrangement to provide that Buyer shall receive the interest of Seller in the benefits under any such Permit or Contract (in which case, for avoidance of doubt, the associated Taxes shall be Assumed Liabilities), including performance by Seller as agent, provided that Buyer shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent Buyer would have been responsible therefor if such consent or approval had been obtained. Seller shall bear all reasonable costs of seeking any such consent or approval. Nothing in this Section 1.5 shall be deemed a waiver by Buyer of its right to receive prior to Closing an effective assignment of all of the Assets nor shall this Section 1.5 be deemed to constitute an agreement to exclude from the Assets any assets described under Section 1.1.

1.6 Purchase Price. The aggregate purchase price payable to Seller for the Assets shall equal (i) Nine Million and Five Hundred One Thousand dollars ($9,501,000), subject to adjustment as set forth herein (such aggregate amount, the "Closing Purchase Price"), plus (ii) 63.34% of the Earnout Amount to be paid pursuant to the percentages set forth in Section 1.12(d) (if any) (together with the Closing Purchase Price, the "Purchase Price"). The Closing Purchase Price shall consist of the following:

(a) An amount in cash (the "Cash Consideration") equal to Seven Million Six Hundred Thousand and Eight Hundred dollars ($7,600,800) (the "Base Cash Consideration"), plus Closing Cash, plus the Closing Working Capital Excess Amount (if any), less the Closing Working Capital Deficiency Amount (if any), payable at the times and in the manner set forth in Section 1.7; and

(b) A number of shares of common stock of Parent (the "Parent Stock") equal to One Million Nine Hundred Thousand and Two Hundred dollars ($1,900,200) divided by the Closing VWAP (the "Shares"), payable at the times and in the manner set forth in Section 1.7.

1.7 Closing Date Payment and Issuance. At the Closing:

(a) Buyer shall pay to Seller an amount equal to (x) the Estimated Cash Consideration, less (x) the Payoff Amount, less (y) the Adjustment Holdback Amount less (z) the Indemnity Escrow Holdback Amount (such amount, the "Closing Cash Payment"), in cash, by wire transfer of immediately available funds to the account designated in writing by Seller;

(b) Buyer shall pay, or cause to be paid, by wire transfer of immediately available funds, the amounts payable pursuant to the Payoff Letters (the "Payoff Amount") to the account(s) designated in the Payoff Letters;

(c) Buyer shall deposit, or cause to be deposited, the Adjustment Holdback Amount with the Escrow Agent in accordance with the Escrow Agreement as security for any downward post-closing adjustment to the Purchase Price pursuant to Section 1.9;

(d) Buyer shall deposit, or cause to be deposited, the Indemnity Escrow Holdback Amount with the Escrow Agent in accordance with the Escrow Agreement as security for any indemnification claims made against Seller pursuant to Article VII;

(e) Buyer or Parent shall issue, or cause to be issued, to Seller (x) the Non-Indemnity Holdback Shares in book-entry form, and Buyer or Parent shall cause the record ownership of such Non-Indemnity Holdback Shares to be in the name of Seller (or in the names and percentage allocations of such other Persons as Seller may request via written notice to Buyer and Parent on a date that is no less than five (5) Business Days prior to Closing, all of whom shall be members of Seller), and (y) the Indemnity Holdback Shares in certificated form, and Buyer or Parent shall cause the record ownership of such Indemnity Holdback Shares to be in the name of Seller, subject to the Indemnity Holdback Share Pledge and the share lockup restrictions set forth in Section 1.9(c)(iii); provided, that, Buyer, Parent and Seller agree that if the Non-Indemnity Holdback Shares are issued directly to the members of Seller, each of the parties hereto shall treat each such issuance of shares for all Tax reporting purposes as a transfer to Seller, followed by a transfer by Seller to its members; and

(f) the Parties shall deliver or cause to be delivered the documents set forth in Section 1.10.

1.8 Closing. Subject to the terms and conditions of this Agreement, the purchase and sale of the Assets and the assumption of the Assumed Liabilities contemplated hereby shall take place at a closing (the "Closing") to be held at 10:00 am, Eastern time, on the date that is not more than five (5) Business Days after the last of the conditions to Closing set forth in Article VI have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), at the offices of Goodwin Procter LLP, 601 Marshall Street, Redwood City, California, or remotely via electronic exchange of documents and signatures, or at such other time or on such other date or at such other place as Seller and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the "Closing Date"); provided that any requirement to deliver documents at the Closing may be satisfied by the electronic delivery of facsimile or portable document format signatures in accordance with Section 9.5.

1.9 Estimated Closing Statement; Purchase Price Adjustment.

(a) Estimated Closing Statement. At least three (3) Business Days prior to the anticipated Closing Date, Seller shall deliver to Buyer a written statement (the "Estimated Closing Statement") consisting of (i) Seller's good faith estimate in reasonable detail (in each case determined as of the Calculation Time, without giving effect to the transactions contemplated by this Agreement to take place at the Closing, in accordance with the Accounting Principles) of (x) the Closing Balance Sheet (the "Estimated Closing Balance Sheet"), (x) Closing Cash ("Estimated Closing Cash"), (y) Closing Working Capital (the "Estimated Closing Working

Capital") and each element thereof, (z) the amount by which such Estimated Closing Working Capital differs from the Target Closing Working Capital (which may positive, negative or zero) and (ii) the Payoff Amount. If the Estimated Closing Working Capital as set forth in the Estimated Closing Statement is greater than Target Closing Working Capital, the "Estimated Working Capital Excess Amount" shall equal Estimated Closing Working Capital minus Target Closing Working Capital. If the Estimated Closing Working Capital as set forth in the Estimated Closing Statement is less than Target Closing Working Capital, the "Estimated Working Capital Deficiency Amount" shall equal Target Closing Working Capital minus Estimated Closing Working Capital. The "Estimated Cash Consideration" for purposes of Section 1.7 shall equal the Base Cash Consideration, plus the Estimated Closing Cash, plus the Estimated Working Capital Excess Amount (if any), less the Estimated Closing Working Capital Deficiency Amount (if any).

(b) Post-Closing Purchase Price Adjustment. No later than ninety (90) days after the Closing Date, Buyer shall prepare and deliver a statement (the "Final Closing Statement") consisting of the Buyer's good faith estimate in reasonable detail (and, in each case, determined as of the Calculation Time without giving effect to the transactions contemplated by this Agreement to take place at the Closing) and in accordance with the Accounting Principles, (i) the Closing Balance Sheet, (ii) the Closing Cash, (iii) the Closing Working Capital, (iv) the Closing Working Capital Excess Amount (if any), (v) the Closing Working Capital Deficiency Amount (if any), and (vi) the Cash Consideration. During the forty-five (45) day period following Buyer's delivery of the Final Closing Statement, Seller shall have, for the purposes of evaluating the Final Closing Statement, reasonable access (A) to the appropriate books and records of Buyer, including working papers, supporting schedules, calculations and other documentation used in the preparation of the Final Closing Statement and (B) to Buyer's officers, employees, agents and representatives as may be reasonably required in connection with the review or analysis of the Final Closing Statement. The Final Closing Statement and the Cash Consideration set forth therein shall be final and binding upon the Parties, and deemed accepted by Seller, unless within forty-five (45) days after Seller's receipt thereof, Seller provides Buyer with a written Objection Notice with respect to the Final Closing Statement (an "Objection Notice"). The Objection Notice shall specify in reasonable detail each item on the Final Closing Statement that Seller disputes and the nature of any objection so asserted and shall be limited to disputes or objections based on mathematical errors or based on Cash Consideration not being calculated in accordance with this Agreement (including, without limitation, not being calculated in accordance with the Accounting Principles). Seller shall be deemed to have agreed with all amounts and items contained in the Final Closing Statement to the extent such amounts and items are not raised in the Objection Notice. If Seller properly delivers an Objection Notice, any dispute raised therein shall be resolved pursuant to the procedures set forth in Section 1.11.

(c) Final Cash Consideration. The Cash Consideration shall be finally determined pursuant to Section 1.9(b) and, if applicable, Section 1.11. No later than five (5) Business Days after the date on which the Cash Consideration is finally determined:

(i) if Cash Consideration equals or exceeds Estimated Cash Consideration, then (x) Buyer shall pay to Seller an amount in cash equal to any excess of Cash Consideration over Estimated Cash Consideration (without any interest thereon) by wire transfer of immediately available funds to the account designated in writing by Seller and

(y) Buyer and Seller shall jointly direct the Escrow Agent to release the full Adjustment Holdback Amount to Seller;

(ii) if Estimated Cash Consideration exceeds Cash Consideration, then Buyer and Seller shall jointly direct the Escrow Agent to (x) release to Buyer from the Adjustment Holdback Amount an amount equal to such excess and (y) to the extent the Adjustment Holdback Amount is greater than such excess, to release to Seller any remaining portion of the Adjustment Holdback Amount; and

(iii) if Estimated Cash Consideration exceeds Cash Consideration, and the excess is greater than the Adjustment Holdback Amount, (x) Buyer and Seller shall jointly direct the Escrow Agent to release to Buyer the full amount of the Adjustment Holdback Amount and (y) Seller shall pay to Buyer, in cash (without any interest thereon), by wire transfer of immediately available funds to the account designated in writing by Buyer, an amount equal to (1) the excess of Estimated Cash Consideration over Cash Consideration minus (2) the Adjustment Holdback Amount, and (z) if Seller fails to make the payment to Buyer pursuant to the foregoing clause (y) then, in addition to any other rights or remedies available to Buyer, Buyer shall be entitled to claim any amounts due to Buyer pursuant to this Section 1.9(c)(iii) from the Indemnity Holdback Amount.

(d) Indemnity Holdback Amount. Until (and including) the Holdback Release Date, and in order to secure Seller's indemnification obligations set forth in Article VII, (i) the Escrow Agent will retain the Indemnity Escrow Holdback Amount, which shall be paid or released in accordance with Section 7.6(c), (ii) Seller will retain, and will not sell, transfer, assign or otherwise distribute to its members or any other Person, any right, title or interest of any kind in the Indemnity Holdback Shares, other than as contemplated by Article VII (the "Indemnity Holdback Restriction"), and (iii) Seller will grant to Buyer a perfected first priority security interest in the Indemnity Holdback Shares (the "Indemnity Holdback Share Pledge").

1.10 Deliveries at Closing.

(a) At or prior to the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

(i) duly executed counterpart to bills of sale, in forms and substance satisfactory to Buyer, with respect to the Assets (the "Bills of Sale");

(ii) a duly executed counterpart to an assignment and assumption agreement, in form and substance satisfactory to Buyer, with respect to the Acquired Agreements and the Assumed Liabilities relating thereto (the "Agreements Assignment and Assumption Agreement");

(iii) a duly executed counterpart to assignment and assumption agreements, in form and substance satisfactory to Buyer, with respect to the Acquired IP and the Assumed Liabilities relating thereto (the "IP Assignment and Assumption Agreements");

(iv) a duly executed counterpart to an assignment and assumption agreement, in form and substance satisfactory to Buyer, with respect to the Acquired Leases and the Assumed Liabilities relating thereto (the "Lease Assignment and Assumption Agreement");

(v) a duly executed counterpart to an assignment and assumption agreement, in form and substance satisfactory to Buyer, with respect to the Assumed Liabilities not otherwise assumed pursuant to the agreements set forth in paragraphs (ii) to (iv) above (the "Other Assumed Liabilities Assignment and Assumption Agreement");

(vi) a duly executed counterpart to the Escrow Agreement;

(vii) copies of all notices, consents (including consents to assignment), compliance with notices (or waivers thereto) of rights of first refusal or similar rights, approvals, and certain other assignments as directed by Buyer, with respect to the Contracts (including the Acquired Agreements, Acquired IP and Acquired Leases) set forth in Schedule 1.10(a)(vii), in each case, in form and substance satisfactory to Buyer;

(viii) a true and correct copy of the resolutions of Seller's managers authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby;

(ix) a true and correct copy of the Seller Member Approval;

(x) a true and correct copy of each Payoff Letter, duly executed by each borrower and creditor thereunder, in customary form reasonably satisfactory to the Buyer and providing for the termination of such Indebtedness and related documents and the termination and release of all Encumbrances securing such Indebtedness;

(xi) a duly executed certificate pursuant to Treasury Regulations Section 1.1445-2(b) evidencing that Seller is not a foreign person within the meaning of Section 1445 and Section 1446 of the Code;

(xii) documents evidencing the Indemnity Holdback Share Pledge, reasonably satisfactory to Buyer;

(xiii) a true and correct copy of Seller's IRS Form W-9;

(xiv) duly completed at-will onboarding documentation of Key Employees;

(xv) duly executed copies of employment agreements by Michael Gerstein, Drew Sharma and Kevin Murphy, in forms and substance satisfactory to Buyer, providing for an annual cash salary of $300,000 for Kevin Murphy, $200,000 for Drew Sharma and no annual salary for Michael Gerstein, a grant of 100,000 restricted stock units for Kevin Murphy, 200,000 restricted stock units for Drew Sharma and 400,000 restricted stock units for Michael Gerstein, such restricted stock units shall vest over three years, a discretionary

bonus as of 2023, and customary non-competition and non-solicitation covenants in favor of the Buyer; and

(xvi) such other documents as Buyer may reasonably request to effect the intent of this Agreement and consummate the transactions contemplated hereby.

(b) At or prior to the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

(i) a duly executed counterpart to the Bills of Sale;

(ii) a duly executed counterpart to the Agreement Assignment and Assumption Agreement;

(iii) duly executed counterparts to the IP Assignment and Assumption Agreements;

(iv) a duly executed counterpart to the Lease Assignment and Assumption Agreement;

(v) a duly executed counterpart to the Other Assumed Liabilities Assignment and Assumption Agreement;

(vi) duly executed counterparts to at-will on-boarding documentation of Key Employees;

(vii) a duly executed counterpart to the Escrow Agreement;

(viii) duly executed copies of employment agreements by Michael Gerstein, Drew Sharma and Kevin Murphy, in forms and substance satisfactory to Buyer, providing for an annual cash salary of $300,000 for Kevin Murphy, $200,000 for Drew Sharma and no annual salary for Michael Gerstein, a grant of 100,000 restricted stock units for Kevin Murphy, 200,000 for Drew Sharma and 400,000 for Michael Gerstein, each of which shall vest over three years, a discretionary bonus as of 2023, and customary non-competition and non-solicitation covenants in favor of the Buyer; and

(ix) such other documents as the Seller may reasonably request to effect the intent of this Agreement and consummate the transactions contemplated hereby.

1.11 Post-Closing Dispute Resolution Procedures. During the thirty (30) Business Day period following the date on which a proper Objection Notice is received by Buyer, Buyer and Seller shall seek in good faith to resolve any objections contained therein. If Buyer and Seller are unable to resolve the dispute within such thirty (30) Business Day period, then any disputed matter set forth in the Objection Notice, as the case may be, that remains unresolved shall be submitted by Buyer for final determination to Marcum LLP or, if Marcum LLP declines to serve, such other independent accounting firm of national reputation selected by the mutual agreement of Buyer and Seller (the "Independent Accounting Firm"). The Independent Accounting Firm shall, based

solely on the presentations made by Buyer and Seller and within thirty (30) days after its appointment, render a written report as to the calculation of the Closing Working Capital; provided that in no event shall the Independent Accounting Firm's determination of Cash Consideration, as the case may be, be outside the range of disagreement between Buyer and Seller. The Independent Accounting Firm shall have exclusive jurisdiction over, and resort to the Independent Accounting Firm shall be the sole recourse and remedy of the Parties against one another or any other Person with respect to, any disputes arising out of or relating to the calculation of Cash Consideration; provided that no Party will be precluded by this sentence from enforcing the determination of the Independent Accounting Firm. The Independent Accounting Firm's determination shall be conclusive and binding on all Parties and shall be enforceable in a court of law. In connection with the resolution of any dispute, each Party shall pay its own fees and expenses, including legal, accounting and consultant fees and expenses. The Independent Accounting Firm shall calculate the allocation of its fees and expenses between Buyer and Seller based upon a fraction (expressed as a percentage), (x) the numerator of which is the aggregate dollar value of the amount of Cash Consideration actually contested that is not awarded to Buyer or Seller (as the case may be) and (y) the denominator of which is the aggregate dollar value of Cash Consideration actually contested between the Parties. For purposes of the preceding sentence, the amount of Cash Consideration actually contested by each of Buyer or Seller shall be determined by reference to their respective written presentations submitted to the Independent Accounting Firm pursuant to this Section 1.11. For example and solely for the purposes of illustration, if Seller claims that the appropriate adjustments are $1,000 greater than the amount determined by Buyer and if the Independent Accounting Firm ultimately resolves such dispute by awarding to Seller $300 of the $1,000 contested, then the fees, costs and expenses of the dispute resolution process contemplated by this Section 1.11 will be allocated 30% (i.e., 300 divided by 1,000, expressed as a percentage) to Buyer and 70% (i.e., 700 divided by 1,000, expressed as a percentage) to Seller.

1.12 Earnout Amount.

(a) The Buyer shall pay Seller the Earnout Amount no later than March 30, 2023.

(b) No later than March 1, 2022, Buyer shall prepare and deliver a statement (the "2021 Net Revenue Statement") consisting of the Buyer's good faith calculation in reasonable detail of the 2021 Net Revenue, providing Seller, for the purposes of evaluating the 2021 Net Revenue Statement, reasonable access (A) to the appropriate books and records of Buyer, including working papers, supporting schedules, calculations and other documentation used in the preparation of the 2021 Net Revenue Statement and (B) to Buyer's officers, employees, agents and representatives as may be reasonably required in connection with the review or analysis of the 2021 Net Revenue Statement. The 2021 Net Revenue Statement shall be final and binding upon the Parties, and deemed accepted by Seller, unless within thirty (30) days after Seller's receipt thereof, Seller provides Buyer with a written Objection Notice. The Objection Notice shall specify in reasonable detail each item on the 2021 Net Revenue Statement that Seller disputes and the nature of any objection so asserted. Seller shall be deemed to have agreed with all amounts and items contained in the 2021 Net Revenue Statement to the extent such amounts and items are not

raised in the Objection Notice. If Seller properly delivers an Objection Notice, any dispute raised therein shall be resolved between the Parties in accordance with Section 1.11.

(c) No later than March 1, 2023, Buyer shall prepare and deliver a statement (the "2022 Net Revenue Statement") consisting of the Buyer's good faith calculation in reasonable detail of the 2022 Net Revenue, providing Seller, for the purposes of evaluating the 2022 Net Revenue Statement, reasonable access (A) to the appropriate books and records of Buyer, including working papers, supporting schedules, calculations and other documentation used in the preparation of the 2022 Net Revenue Statement and (B) to Buyer's officers, employees, agents and representatives as may be reasonably required in connection with the review or analysis of the 2022 Net Revenue Statement. The 2022 Net Revenue Statement shall be final and binding upon the Parties, and deemed accepted by Seller, unless within thirty (30) days after Seller's receipt thereof, Seller provides Buyer with a written Objection Notice. The Objection Notice shall specify in reasonable detail each item on the 2022 Net Revenue Statement that Seller disputes and the nature of any objection so asserted. Seller shall be deemed to have agreed with all amounts and items contained in the 2022 Net Revenue Statement to the extent such amounts and items are not raised in the Objection Notice. If Seller properly delivers an Objection Notice, any dispute raised therein shall be resolved between the Parties in accordance with Section 1.11.

(d) Any Earnout Amount, that may be paid pursuant to Section 1.6 of this Agreement, will be paid by the Buyer within five (5) Business Days following the final determination thereof in accordance with this Section 1.12 (and Seller agrees to this payment arrangement) as follows: (A) 25% to Michael Gerstein/Jabalah LLC; (B) 25% to Drew Sharma/PMSB Holdings LLC; (C) 25% to Brett Husak/Eastham Holdings LLC and (D) 25% to Kevin Murphy.

(e) Seller and each Owner acknowledge and agree that (i) the contingent right to receive any Earnout Amount shall not be represented by any form of certificate or other instrument, is not guaranteed or secured in any fashion (other than as expressly stated herein), is not transferable and does not constitute an equity or ownership interest in Buyer or any Affiliate, (ii) neither Seller nor any Owner shall have any rights as a securityholder of Buyer or any Affiliate as a result of the contingent right to receive the Earnout Amount, (iii) no interest is payable with respect to the Earnout Amount and (iv) Buyer has made no assurance, warranty or representation, express or implied, as to the achievement of any Earnout Amount. Notwithstanding anything to the contrary, nothing set forth in this Agreement shall prevent Buyer or any of its Affiliates from (x) operating their businesses in their sole discretion and in the best interests of Buyer and its Affiliates and their respective shareholders, or (y) conducting their businesses in accordance with their sole business judgment and, in connection therewith, making any decision that they determine to be reasonable; provided, however, that the parties acknowledge and agree that, so long as they remain employed by Buyer or its Affiliates, the Key Employees shall have reasonable authority with respect to the day-to-day operations to operate the Business at least in accordance with the course of conduct and operations of the Business as of the Closing Date through December 31, 2022. Notwithstanding the foregoing or anything to the contrary contained herein, neither Buyer nor Parent shall take any action, or refrain

from taking any action, the sole purpose of which is to materially reduce the Earnout Amount or avoid or materially delay payment of the Earnout Amount.

(f) Neither Buyer nor Parent shall (i) sell, exclusively license or otherwise dispose of all or substantially all of the assets of Parent or Buyer (including, for the avoidance of doubt, all or any material portion of the Assets) or (ii) undertake a merger, consolidation, recapitalization, sale of equity or other transaction in which any third party that is not wholly owned directly or indirectly by Parent becomes the beneficial owner, directly or indirectly, of 50% or more of the combined voting power of all interests in Parent or Buyer (clause (i) or (ii), a "Sale Event") prior to the full satisfaction of Buyer's and Parent's obligations under this Section 1.12 unless the buyer in such Sale Event agrees to (x) perform the obligations of Buyer or Parent, as applicable, pursuant to this Section 1.12 in the same manner and to the same extent Buyer or Parent would have been required to perform such obligations if such Sale Event had not occurred, (y) continue to operate the Business, at least in accordance with the course of conduct and operational capacity of the Business as of the Closing Date and (z) not take any action, or refrain from taking any action, that would reasonably be expected to materially reduce the Earnout Amount or avoid or materially delay payment of the Earnout Amount.

1.13 Withholding Rights. Buyer shall be entitled to deduct and withhold such amounts as it is required to deduct and withhold with respect to the making of any payment under any provision of federal, state, local or foreign Tax Law; *provided* that Buyer shall use commercially reasonable efforts to notify Seller of such amounts and provide Seller or the relevant recipient a reasonable opportunity to mitigate or eliminate any withholding with respect to payments pursuant to this Agreement and the Parties shall use commercially reasonable efforts to cooperate to eliminate any withholding on payments made pursuant to this Agreement. To the extent that amounts are so withheld by Buyer and properly remitted to the applicable Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to Seller. Buyer shall timely pay such withheld amounts to the applicable Governmental Authority. As of the date hereof, Buyer is not aware of any withholding obligations under any provision of federal, state, local or foreign Tax Law that would require Buyer to deduct or withhold any amounts pursuant to this Section 1.13, subject to receipt of Seller's IRS Form W-9.

1.14 Allocation of Purchase Price. Buyer and Seller agree upon the allocation of the Purchase Price and Assumed Liabilities (the "Aggregate Consideration") as set forth on Schedule 1.14, subject to adjustments of the Purchase Price pursuant to Section 1.9 and, if applicable, Section 1.11 (the "Allocation Schedule"). The Allocation Schedule shall comply with the allocation method required by Section 1060 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, shall reflect the parties' agreement as to the fair market value of each of the Assets immediately prior to Closing, and shall be reflected on IRS Form 8594 (Asset Acquisition Statement under Section 1060), and shall be used by the Parties in preparing their respective income tax returns. The Parties covenant and agree with each other that none of them will take a position on any income tax return or in any other proceeding that is in any way inconsistent with the allocation set forth on Schedule 1.14, subject to adjustments of the Aggregate Consideration (with such adjustments to be allocated among the Assets as reasonably

agreed by the parties), except as otherwise required by a taxing authority subsequent to an audit defended in good faith.

1.15 Tax Treatment. Any payment by Buyer or Seller, as the case may be, pursuant to Section 1.9 or Article VII will be treated as an adjustment to the Purchase Price, unless otherwise required by applicable Law.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF SELLER

In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer and Parent (except as set forth in the Schedules of Seller, which shall be arranged in sections corresponding to the sections of this Agreement; provided that disclosures in any section of the Schedules shall qualify any other section in this Agreement to which it is reasonably apparent from a reading of such Schedules without assuming any knowledge of the matters disclosed therein that such information is relevant to any other section), as follows:

2.1 Organization and Qualification. Seller and each other member of the Company Group is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of its formation, with power and authority to carry on its business (including the Business) and to own or lease and to operate its properties as and in the places where such business is conducted and such properties are owned, leased or operated, except where the failure to be in good standing or have such authority would not have a Material Adverse Effect. Seller and each other member of the Company Group is duly qualified or licensed to do business in each jurisdiction in which the properties and assets owned, leased or operated by the respective Company Group member in the conduct of the Business or the nature of the Business makes such qualification necessary, except where the failure to be so licensed or qualified would not have a Material Adverse Effect. Seller has delivered to Buyer complete and correct copies of the organizational documents of each member of the Company Group (including the Seller Operating Agreement), in each case, as amended and in effect on the date hereof. Neither the Seller nor any other member of the Company Group is in violation of any of the provisions of its organizational documents in any material respect.

2.2 Contemplated Transactions General Compliance.

(a) Enforceability; Authority. Seller has all requisite power and authority to enter into this Agreement and the other Ancillary Agreements to be executed and delivered by Seller, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Assuming due authorization, execution and delivery of this Agreement by the other Parties hereto, this Agreement constitutes a valid and binding obligation of Seller and any other member of the Company Group, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally and by general principles of equity (whether in a proceeding at law or in equity) (the

"Creditor's Rights Exception"). The execution, delivery and performance of this Agreement and the other agreements contemplated hereby to be executed and delivered by Seller and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite action on the part of Seller and any other member of the Company Group, including all actions required pursuant to the terms of the Seller Operating Agreement, and no other proceedings on the part of Seller or any other member of the Company Group are necessary to authorize the execution, delivery or performance of this Agreement or the other agreements contemplated hereby. The Seller has obtained the Seller Member Approval in accordance with the terms of the Seller Operating Agreement.

(b) No Conflict. The execution and delivery of this Agreement and the other agreements contemplated hereby and the consummation or performance of any of the transactions contemplated hereby or thereby will not: (i) conflict with or violate any provisions of the organizational documents of the Seller or any other member of the Company Group; or (ii) Breach any provisions of or result in the termination, cancellation, modification, maturation or acceleration of, any rights or obligations under any Material Contract, Order or Law to which the Seller or any other member of the Company Group is subject or by which any member of the Company Group's properties or assets is bound except, in the case of this clause (ii), in respect of the notice and consent requirements set forth in Schedule 2.2(d), except in the cases of clauses (i) and (ii), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect.

(c) Subsidiaries. Seller has no Subsidiaries.

(d) Consents; Governmental Filings. Except as set forth in Schedule 2.2(d), neither Seller nor any other member of the Company Group is required as the result of any Law, Order, Material Contract or the acquisition by Buyer of any Asset to (i) give any notice to (including notice to satisfy rights of first refusals or such similar rights of Third Parties) or obtain any consent from any Third Party in connection with the execution and delivery of this Agreement, (ii) obtain consent in connection with the assignment of any Asset to Buyer, (iii) comply with or obtain a waiver regarding any right of first refusal or similar right held by a Third Party in connection with the assignment of any Asset to Buyer, or (iv) obtain approval from a Third Party with respect to any other agreements contemplated hereby or the consummation or performance of any of the transactions contemplated by this Agreement. No filings or registration with, notification to, or authorization, license, clearance, permit, qualification, waiver, order, consent or approval of any Governmental Authority (collectively, "Governmental Filings") are required in connection with the execution, delivery and performance of the transactions contemplated by this Agreement by Seller, except as stated on Schedule 2.2(d).

2.3 Financial Statements.

(a) Attached as Schedule 2.3 are true and complete copies of the Financial Statements. The Financial Statements have been prepared in accordance with the Accounting Principles and fairly present, as of their respective dates, in all material respects the financial position, results of operation and cash flows of the Business at the dates and for the relevant periods indicated. The balance sheets included in the Financial Statements do not include any material assets or liabilities

not intended to constitute a part of the Business or the Assets after giving effect to the transactions contemplated hereby (other than the Excluded Assets and the Excluded Liabilities). The statements of income and retained earnings and statements of cash flows included in the Financial Statements do not reflect the operations of any entity or business not intended to constitute a part of the Business or the Assets after giving effect to the transactions contemplated hereby (other than the Excluded Assets and the Excluded Liabilities).

(b) Seller has devised and maintained systems of internal accounting controls with respect to the Business sufficient to provide reasonable assurances that (i) all transactions are executed in accordance with management's general or specific authorization, (ii) all transactions are recorded as necessary to permit the preparation of financial statements in conformity with the applicable past accounting practices and to maintain proper accountability for items and (iii) access to its property and assets is permitted only in accordance with management's general or specific authorization.

2.4 Indebtedness. Schedule 2.4 sets forth the Indebtedness of Seller and each other member of the Company Group as of the date of this Agreement, other than current liabilities incurred in the ordinary course of business consistent with past practice.

2.5 No Undisclosed Liabilities. Neither Seller nor any other member of the Company Group has any liabilities or obligations, whether known, unknown, absolute, accrued, contingent or otherwise and whether due or to become due, arising out of or relating to the Business or the Assets except (a) as set forth on Schedule 2.4 or Schedule 2.5, (b) as and to the extent reflected, disclosed or reserved against in the Latest Balance Sheet or specifically disclosed in the notes thereto and (c) for liabilities and obligations that were incurred after the Latest Balance Sheet Date in the ordinary course of business consistent with past practice and reflected in the Estimated Closing Balance Sheet included in the Estimated Closing Statement.

2.6 Absence of Certain Changes. Except as set forth in Schedule 2.6 or as otherwise expressly contemplated by this Agreement, from the Latest Balance Sheet Date until the date of this Agreement, (a) the Business has been conducted in all material respects in the ordinary course of business, (b) there have been no changes, events, results, occurrences, states of fact, circumstances or developments that would constitute a Material Adverse Effect and (c) Seller has not taken (or not taken) any action that, if taken (or not taken) from the date hereof would have required Buyer's consent under Section 4.1.

2.7 Material Contracts.

(a) Schedule 2.7(a) sets forth all Contracts, of the type described below, to which Seller and any other member of the Company Group is a party and relate to the Business or the Assets or by which any of the Assets are bound, other than the Indebtedness disclosed pursuant to Section 2.4; Leases disclosed pursuant to Section 2.8(c); the Inbound Licenses and Outbound Licenses; the Benefit Plans disclosed pursuant to Section 2.13(a); the insurance policies disclosed pursuant

to Section 2.16, and the Affiliate Contracts disclosed pursuant to Section 2.17 (all such Contracts, together with the Contracts disclosed on Schedule 2.7(a), the "Material Contracts"):

(i) each Contract that involves aggregate consideration in excess of $10,000 and that, in each case, cannot be cancelled by Seller without penalty or without more than thirty (30) days' notice;

(ii) each Contract or group of related Contracts with the same party for the purchase by any member of the Company Group of products or services (A) under which the undelivered balance exceeds $10,000, or (B) which based on monthly payments prior to the Closing Date, involves a payment obligation of any member of the Company Group in excess of $3,000 individually or in the aggregate;

(iii) each Contract or group of related Contracts with the same party for the sale of products or services by any member of the Company Group (A) under which the undelivered balance exceeds $10,000, or (B) which based on monthly payments prior to the Closing Date, involves a payment obligation to any member of the Company Group in excess of $3,000 individually or in the aggregate;

(iv) each Contract that requires a member of the Company Group to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;

(v) each Contract that (A) prohibits any member of the Company Group from engaging in any line of business or competing with any Person or in any geographic area (B) restricts the Persons to whom a member of the Company Group may sell products or deliver services, (C) contains an exclusivity obligation, most-favored-nation provision or "best price" obligation enforceable against a member of the Company Group;

(vi) each Contract that grants any rights of first refusal, rights of first offer or other similar rights to any Person with respect to any asset of a member of the Company Group;

(vii) each Contract pursuant to which a member of the Company Group has acquired or disposed of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(viii) each Contract for the employment of any officer or individual employee, and any Contract for the provision of consulting services by any individual person or any Contract for the provision of services by any independent contractor, in each case which involves aggregate consideration in excess of $10,000 per year and which cannot be terminated without penalty by the member of the Company Group party thereto on notice of thirty (30) days or less;

(ix) any Contract that is a settlement or conciliation agreement with any Governmental Authority or Person, relating to the resolution or settlement of an actual or

threatened Action and pursuant to which the Company Group will have any material outstanding obligation after the date of this Agreement;

(x) all Contracts that provide for the indemnification by a member of the Company Group of any Person or the assumption of liability of any Person and that are otherwise Material Contracts;

(xi) each lease or agreement under which a member of the Company Group is lessor of, or permits any third party to hold or operate, any tangible property, real or personal, owned by any member of the Company Group;

(xii) all Contracts with any Governmental Authority;

(xiii) any Contracts that provide for any joint venture, partnership or similar arrangement by any member of the Company Group;

(xiv) all collective bargaining agreements or Contracts with any union or other labor organization;

(xv) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(xvi) each Contract pursuant to which a member of the Company Group may be required to pay commissions or royalty payments; and

(xvii) any Contract involving a franchise arrangement with any third party (including an Affiliate Contract) involving any Company Group Intellectual Property.

(b) Each Material Contract is valid and binding on the member of the Company Group that is party thereto in accordance with its terms and is in full force and effect, subject to the Creditor's Rights Exception. Neither Seller nor, to Seller's Knowledge, any other party thereto is in Breach in any material respect under any Material Contract. To Seller's Knowledge, the other parties to the Material Contracts have fully complied with their obligations thereunder. Except as set forth in Schedule 2.7(b), no party has delivered written notice of termination and, to Seller's Knowledge, no party has threatened to exercise any termination right with respect to any Material Contract. Except as set forth in Schedule 2.7(b), to Seller's Knowledge, no event or circumstances has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. True, correct and complete copies of the Material Contracts, including all amendments, schedules, exhibits and other attachments thereto, have been delivered to Buyer prior to the date hereof.

(c) Except as set forth in Schedule 2.7(c), no consent of or notice to any Third Party is required under any Material Contract as a result of or in connection with, and the terms of and enforceability of any Material Contract will not be affected by, the execution, delivery and performance of this Agreement or any of the other agreements contemplated hereby or the consummation of the transactions contemplated hereby and thereby.

2.8 Assets.

(a) Title to Assets, etc. Seller (or another member of the Company Group, as applicable) has good and valid title to, or otherwise has the right to use pursuant to a valid and enforceable lease, license or similar contractual arrangement, all of the Assets except as may be disposed of in the ordinary course of business consistent with past practice after the date hereof and in accordance with this Agreement, in each case free and clear of any Encumbrance other than Permitted Encumbrances. Other than this Agreement, there are no agreements with, options or rights granted in favor of, any person to directly or indirectly acquire any Asset, or any interest therein or any tangible properties or assets of a member of the Company Group, other than as set forth in Schedule 2.2(d). No tangible assets or properties used by each member of the Company Group in the conduct of its business, as currently conducted, are held in the name or in the possession of any person or entity other than such member of the Company Group. There are no voting trusts, proxies or other agreements, understandings or obligations in effect with respect to the voting, transfer or sale (including any rights of first refusal, rights of first offer or drag-along rights), issuance (including any pre-emptive or anti-dilution rights), redemption or repurchase (including any put or call or buy-sell rights), or registration (including any related lock-up or market standoff agreements) with respect to any of the Assets or any member of the Company Group, except as set forth in Schedule 2.2(d).

(b) Sufficiency of Assets, etc. The Assets constitute all of the assets required for the conduct of the Business as conducted on the date hereof. To the Knowledge of Seller, there are no facts or conditions affecting any material Assets which would reasonably be expected, individually or in the aggregate, to interfere with the current use, occupancy or operation of such Assets.

(c) Real Property and Leases. No member of the Company Group currently owns or has in the past owned any real property. Schedule 2.8(c) sets forth true and correct addresses of all real property leased or rented by any member of the Company Group (the "Leased Property"). The Leased Property constitutes all of the facilities used or occupied in the conduct of the Business as currently conducted. Each parcel of the Leased Property is the subject of a written lease agreement (each, a "Lease"), and there are no oral terms inconsistent with the written terms thereof. To the Knowledge of Seller, the Company Group's use and operation of the Leased Property conform to all applicable Laws, Permits and Orders in all material respects. Seller has not received written notice from landlords or any Governmental Authority that: (i) relates to violations of building, zoning, safety or fire ordinances or regulations; (ii) claims any defect or deficiency with respect to any of such properties; or (iii) requests the performance of any repairs, alterations or other work to the Leased Property, in each case that has not been subsequently addressed or corrected. Except as set forth in Schedule 2.8(c), Seller and each other member of the Company Group has exclusive possession of each Leased Property, there are no leases, subleases, licenses, concessions or other agreements, written or oral, granting to any other party or parties the right of use or occupancy with respect to such Leased Property. The Leased Property has been supplied with utilities and other services reasonably sufficient for the operation of the Business as currently conducted. All Leases are valid and binding agreements, enforceable in accordance with their respective terms, are in full force and effect and are not in default.

2.9 Intellectual Property.

(a) All of the Intellectual Property Assets are held by Seller or another member of the Company Group and are Assets being acquired pursuant to Article I of this Agreement. Schedule 2.9(a) lists all issued patents, registered trademarks, registered copyrights, registered domain names and all applications for the registration or issuance of any of the foregoing owned by or exclusively licensed to any member of the Company Group that are Intellectual Property Assets (collectively, the "Business Registered Intellectual Property"), indicating as to each item as applicable: (i) the jurisdictions in which such item is issued or registered or in which any application for issuance or registration has been filed, (ii) the respective issuance, registration, or application number of the item, (iii) the dates of application, issuance or registration of the item, (iv) expiration dates (for domain names only), and (v) name of registrant.

(b) Each item of the Business Registered Intellectual Property is (i) subsisting in good standing, and not the subject of any pending or, to Seller's Knowledge, threatened proceeding before any Governmental Authority challenging its extent, validity, enforceability or Seller's ownership thereof (except in the course of prosecution thereof), and (ii) to Seller's Knowledge and excluding applications, valid and enforceable.

(c) Schedule 2.9(c) lists all material Contracts, to which a member of the Company Group is a party, relating to the development, ownership, or license of any rights under any Intellectual Property Assets, including licenses, sublicenses, consents and other agreements: (i) by which any member of the Company Group is authorized to use any material Intellectual Property Assets ("Inbound Licenses"), other than commercially available off the shelf software that is not incorporated into any commercial product or service of any member of the Company Group that is software, for which the relevant member of the Company Group pays less than $10,000 in licensing or other fees per annum; (ii) by which any member of the Company Group is restricted from the use or exploitation of any material Intellectual Property Assets (including, co-existence agreements and settlement agreements); (iii) by which an Intellectual Property Asset owned or purported to be owned by a member of the Company Group is or has been developed for such member of the Company Group, assigned to such member of the Company Group, or assigned by such member of the Company Group to a Third Party (excluding agreements with Employees and contractors entered into in the ordinary course of business that grant all rights in such IP to such member of the Company Group); and (iv) by which a member of the Company Group authorizes a Third Party to use any material Intellectual Property Assets ("Outbound Licenses"), other than non-exclusive licenses granted in the ordinary course of business to (A) customers of the Business pursuant to standard end-user agreements of each member of the Company Group (to the extent applicable), the form of which has been provided to special counsel for Buyer, consistent with past practice in connection with the use of products or services of the Business, or (B) service providers, distributors or other business partners in the ordinary course of business, in connection with the performance of services for the Business or relevant activities regarding its products or services.

(d) Seller has taken all reasonable measures and steps to protect all confidentiality and value of the Intellectual Property Assets.

(e) All former and current employees and contractors of each member of the Company Group that have been involved in the development of any Intellectual Property for a member of the Company Group have executed written instruments with the applicable member of the Company Group that assign to such member of the Company Group all rights, title and interest in and to any and all such Intellectual Property, including as applicable, inventions, improvements, ideas, discoveries, developments, writings, works of authorship, know-how, processes, methods, technology, data, information and other intellectual property.

(f) The Seller or another member of the Company Group is the sole owner of the Intellectual Property Assets that are owned by the Company Group, free and clear of all Encumbrances, except Permitted Encumbrances or any requirement of any past (if outstanding), present or future payment. The Seller or another member of the Company Group owns all right, title and interest in and to, or has a valid and enforceable license, sublicense, or right to use, all of the Intellectual Property Assets used in and necessary for the conduct of the Business.

(g) Except as set forth in Schedule 2.9(g), neither the Seller nor any other member of the Company Group has any pending, unresolved notice, claim, demand or other assertion since January 1, 2018 made to or, as of the date hereof, from any other Person, including for the avoidance of doubt, any cease and desist letter or offer of license, (i) alleging any infringement, dilution or misappropriation (including, challenging the use) by a member of the Company Group of any other Person's Intellectual Property with respect to the Business, (ii) challenging the ownership, use, validity or enforceability of any Intellectual Property Assets owned by a member of the Company Group or (iii) relating to the security of Company Data.

(h) Except as set forth in Schedule 2.9(h), (i) to Seller's Knowledge the operation of the Business or any activity by any member of the Company Group with respect to the Business does not infringe upon, violate or constitute misappropriation of, and has not infringed, violated or constituted misappropriation of, the Intellectual Property of any other Person, provided that the foregoing representation and warranty shall with respect to patent infringement be limited to Seller's Knowledge, and (ii) to Seller's Knowledge, the Intellectual Property Assets owned by a member of the Company Group and used in the operation of the Business has not been infringed, diluted or misappropriated by any other Person.

(i) Buyer has reviewed Seller's privacy policies located on Seller's applicable websites and domains, including any security and data privacy policies maintained on each website and each mobile application of Seller (collectively, "Company Data"), which are compliant with applicable Law in all material respects. The Company Group's practices with regard to the collection, dissemination, safeguarding and use of Company Data are and have been in compliance with all Privacy Commitments. The Seller and the Company Group have taken all organizational, physical, administrative and technical measures required by Privacy Commitments and consistent with standards prudent in the industry in which the Seller and the Company Group operate to protect the integrity, security and operations of all Assets, IT Infrastructure and all Personal Information. To Seller's Knowledge, there has been no material loss of, or intentional and unauthorized access, use, disclosure or modification of any Company Data. Neither Seller nor any other member of the Company Group has received any inquiries from or been subject to any audit or Litigation by any Governmental Authority regarding Company Data. No Litigation alleging (a)

a material violation of any person's privacy rights or (b) unauthorized access, use or disclosure of Company Data has been asserted or threatened against Seller or any other member of the Company Group.

(j) In connection with each third-party servicing, outsourcing, processing, or otherwise using Personal Information collected, held, or processed by or on behalf of the Seller and/or the Company Group, the Seller and Company Group have in accordance with applicable Privacy Commitments entered into valid, binding an enforceable written data processing agreements with any such third party to protect and secure Personal Information from data security incidents and restrict use of Personal Information to those authorized or required under the servicing, outsourcing, processing, or similar arrangement.

2.10 Litigation. Except as set forth on Schedule 2.9(i), since January 1, 2018, there has not been, and there is no pending or, to Seller's Knowledge, threatened Litigation or Order: (i) by or against any member of the Company Group or any of the Assets; (ii) that challenges the transactions contemplated by this Agreement and the agreements contemplated hereby; or (iii) that seeks to enjoin or prohibit consummation of, or seeks other equitable relief with respect to, the transactions contemplated by this Agreement and the agreements contemplated hereby. There is no unsatisfied judgment or any open injunction binding upon any member of the Company Group that would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Seller to enter into and perform its obligations under this Agreement. Since January 1, 2018, there have been no misclassification claims regarding any employee (including any Business Employee) or independent contractor against Seller or any other member of the Company Group.

2.11 Compliance with Laws or Orders; Permits; Regulatory.

(a) Except as set forth on Schedule 2.11(a), since January 1, 2018, to the Knowledge of Seller, no member of the Company Group is or has been in Breach of any Law or Order in any material respect. Since January 1, 2018, no member of the Company Group has received notice of any violation of any applicable Law from any Governmental Authority.

(b) Seller holds and is in compliance with, to the extent required by applicable Law, all Permits required for the conduct of the Business and such Permits required for the conduct of the Business are Assets being acquired pursuant to Article I of this Agreement. Schedule 2.11(b) lists all Permits issued in connection with the Business, including the names of the Permits, their holders, and their respective dates of issuance and expiration.

2.12 Environmental Matters. Seller has complied and is in compliance in all material respects with all applicable Environmental Laws pertaining to the Business or the Assets and the use and ownership thereof. No violation by any member of the Company Group is being or has been alleged in writing or, to the Knowledge of Seller, orally of any applicable Environmental Law relating to the Business or the Assets or the use or ownership thereof.

2.13 Employee Benefit Plans.

(a) Schedule 2.13(a) sets forth a complete and correct list of all material Company Benefit Plans. None of the Company Benefit Plans is a Standalone Plan and, except as set forth on Schedule 2.13(a), neither the Seller nor any other member of the Company Group has any Liabilities under, or with respect to, any Company Benefit Plan. With respect to each material Company Benefit Plan, Seller has made available to Buyer a complete and correct copy or, if not written, summary of the applicable plan document.

(b) Each Company Benefit Plan (including any related trust) has been established, operated and administered in substantial compliance with its terms and applicable Laws, including ERISA, the Code, and the Patient Protection and Affordable Care Act of 2010. No Company Benefit Plan is intended to be qualified under Section 401(a) of the Code and no member of the Company Group has maintained, sponsored or contributed to any Company Benefit Plan intended to be qualified under Section 401(a) of the Code. As of the date of this Agreement, there is no pending or, to Seller's Knowledge, threatened material Action relating to any Company Benefit Plan with respect to the Business Employees, except for routine claims for benefits, which could reasonably be expected to result in any material liability to the Company.

(c) No member of the Company Group or any of their ERISA Affiliates has ever (i) maintained, sponsored, contributed to or has any obligation to contribute to (whether contingent or otherwise) any plan that is subject to Title IV of ERISA, or (ii) has any liability (contingent or otherwise) with respect to, any plan that is subject to Title IV of ERISA. There are no circumstances under which Buyer or any of its Affiliates could reasonably expect to be assessed any Liability under Title IV of ERISA or Section 412 or 430 of the Code by reason of being treated as a single Person with Seller and its Affiliates prior to the Closing. No Company Benefit Plan is subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code, or is a "multi-employer plan" (as defined in Section 3(37) of ERISA). The Company has not withdrawn from any pension plan under circumstances resulting (or expected to result) in a liability to the Pension Benefit Guaranty Corporation. No Company Benefit Plan provides welfare benefits after termination of employment except to the extent required by Section 4980B of the Code.

(d) Except as set forth on Schedule 2.13(d), the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not, whether alone or in combination with any other event, (i) entitle any Business Employee to severance pay or any other payment, (ii) result in any payment becoming due, accelerate the time of payment or vesting of benefits, or increase the amount of compensation due to any Business Employee, (iii) result in any forgiveness of indebtedness, trigger any funding obligation in respect of any Company Benefit Plan or otherwise or (iv) result in any "payment" to any "disqualified individual" (in each case within the meaning of Treasury Regulation Section 1.280G-1) that could reasonably be construed, individually or in combination with any other such payment, to constitute an "excess parachute payment" (within the meaning of Section 280G(b)(1) of the Code). No Person is entitled to receive any additional payment (including any tax gross-up or other payment) from any member of the Company Group as a result of the imposition of the excise Taxes under Section 4999 of the Code or any Taxes required by Section 409A of the Code or due to loss of any Tax deduction under Section 280G of the Code.

2.14 Labor.

(a) Schedule 2.14(a) sets forth a list, as of the date hereof, of all Business Employees. Seller has provided or made available to Buyer, as of the date hereof, for each Business Employee, such employee's title, annual base salary, the date of hire of each such employee and each such employee's principal work location.

(b) No member of the Company Group is a party to, or bound by, any collective bargaining agreement and there are no labor unions or other organizations representing, or to the Seller's Knowledge purporting or attempting to represent any Business Employees. There is no pending or, to Seller's Knowledge, threatened, and there has not been, any strike, lockout, slowdown, or work stoppage by or with respect to the Business Employees. The consent of, consultation of or the rendering of formal advice by any labor or trade union, works council or any other employee representative body is not required for the execution and delivery of this Agreement by the Seller or the consummation of the transactions contemplated hereby. There is no unfair labor practice charge or complaint, grievance or labor arbitration, pending or threatened, against Seller before the National Labor Relations Board or any Governmental Authority or arbitrator.

(c) To the Knowledge of Seller, Seller, each other member of the Company Group, and each of their Affiliates is, and since January 1, 2018 has been, in compliance in all material respects with all applicable Laws respecting labor, employment and employment practices, including all Laws respecting terms and conditions of employment or engagement, fair employment practices, employment standards, workers' compensation, meal and rest breaks, occupational safety and health requirements, plant closings, wages and hours, pay equity, worker classification, benefit plan participation, discrimination, sexual harassment, affirmative action, work authorization, immigration, Form I-9 matters, requirements, guidelines and recommendations in response to the COVID-19 pandemic (including, but not limited to, the Coronavirus Aid, Relief, and Economic Security Act or the American Rescue Plan Act), continuation coverage under group health plans, pension commitments, disability rights or benefits, equal opportunity, human rights, labor relations, employee leave issues and unemployment insurance and related matters. With respect to each individual who has rendered services to or on behalf of the Business, whether directly or indirectly (including through a third person), Seller, each other member of the Company Group, and each of their Affiliates has accurately classified each such individual as an employee, independent contractor, or otherwise under any and all applicable Laws, and each such individual classified as an employee has been properly classified as exempt or nonexempt under any and all applicable Laws. Seller and its Affiliates have not, any time within the six (6) months preceding the date of this Agreement, had any "plant closing" or "mass layoff" (as defined in the WARN Act) or other terminations of employees that would create any obligations upon, or liabilities for Buyer under the WARN Act or similar state and local laws.

(d) Except as would not result in material liability for the Company Group: (i) each member of the Company Group has fully and timely paid all wages, salaries, wage premiums, commissions, bonuses, severance and termination payments, fees, and other compensation that have come due and payable to its current or former employees and independent contractors, (ii) each individual currently employed, or who was since January 1, 2018 employed, by a member of

the Company Group is and has been properly classified under applicable wage and hour Laws, and (iii) each individual who is providing, or since January 1, 2018 has provided, services to a member of the Company Group and is and has been classified or treated as an independent contractor, consultant, leased employee, or other non-employee service provider is and has been properly classified and treated as such for all applicable purposes.

(e) There are no complaints, lawsuits or other proceedings pending or, to Seller's Knowledge, threatened against Seller, any other member of the Company Group, or any of their Affiliates brought by or on behalf of any Business Employee or any current or former prospective employee or individual service provider of Seller or any other member of the Company Group, including any pending or threatened complaint filed by any such individual with the National Labor Relations Board, the Equal Employment Opportunity Commission, or any equivalent Governmental Authority responsible for the prevention of unlawful employment practices.

(f) There is no pending or, to Seller's Knowledge, threatened claim or litigation against Seller or any member of the Company Group with respect to allegations of sexual harassment, discrimination or other workplace misconduct, and (i) there have been no reported internal or external complaints accusing any supervisory or managerial Business Employee (or employee of Seller, any member of the Company Group, and their Affiliates who performed services for the Business) of sexual harassment, discrimination or other workplace misconduct and (ii) there has been no settlement of, or payment arising out of or related to, any litigation or complaint with respect to sexual harassment, discrimination or other workplace misconduct. No member of the Company Group reasonably expects any material liabilities with respect to any allegations of sexual harassment, discrimination or other workplace misconduct, and no member of the Company Group is aware of any such allegations relating to its officers, directors, employees, contractors, or agents that, if known to the public, would bring the Company Group into material disrepute.

2.15 Taxes.

(a) All Tax Returns required to have been filed with respect to the Business, the Assets, Seller and any other member of the Company Group have been duly and timely filed. All such Tax Returns were correct and complete in all material respects. Except as set forth on Schedule 2.15(a), all Taxes due and owing by Seller (or any other member of the Company Group) with respect to the Business or the Assets have been duly and timely paid. Neither Seller (nor any other member of the Company Group) is currently the beneficiary of, or has made any currently outstanding request with respect to the Business or Assets for, any extension of time within which to file any Tax Return. No written notice of a claim is currently outstanding by a Governmental Authority in a jurisdiction where Seller (or any other member of the Company Group) does not pay a particular type of Tax or file a particular type of Tax Return that Seller (or any other member of the Company Group) is or may be subject to such taxation by, or required to file any such Tax Return with, that jurisdiction, in each case in respect of the Business or the Assets. There are no liens for Taxes (other than Taxes not yet due and payable) upon any of the Assets.

(b) All Taxes required to have been withheld with respect to the Business or the Assets have been duly and timely withheld and such withheld Taxes have been either duly and timely paid to the proper Governmental Authority or properly set aside in accounts for such purpose.

(c) Except as set forth on Schedule 2.15(c), no Tax audits, investigations or administrative or judicial Tax proceedings are currently being conducted in respect of the Business or the Assets. Neither Seller nor any other member of the Company Group has received from any Governmental Authority (including jurisdictions where Seller or such other member of the Company Group has not filed a Tax Return) in respect of the Business or the Assets any written (i) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by such Governmental Authority, in the case of each of (i) through (iii), that has not been resolved.

(d) Seller has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, in each case in respect of the Business or Assets, which waiver or extension is currently in effect.

(e) Seller has charged, collected and remitted on a timely basis all sales Taxes as required under applicable Tax Laws to be charged, collected and remitted on any sale, supply, provision of services or delivery by Seller in respect of the Business.

(f) Buyer will not be required to include any item of income in taxable income after the Closing as a result of any prepaid amount received by Seller or any other member of the Company Group prior to the Closing Date.

(g) Seller does not have any liability for the Taxes of any other Person whether under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, or by Contract (other than Contracts entered into in the ordinary course of business not primarily related to Taxes).

2.16 Insurance. Schedule 2.16 sets forth a complete and accurate list of all policies and Contracts for insurance (including coverage amounts, policy numbers, issuer, type of insurance, annual premiums and expiration dates) relating to the Assets or the Business as of the date hereof (collectively, the "Insurance Policies"), and complete and accurate copies of such Insurance Policies have been made available to Buyer. All Insurance Policies are in full force and effect in accordance with their terms. No written notice of cancellation, termination, premium increase or alteration of coverage has been received by Seller with respect to any Insurance Policy. All Insurance Policies (a) are valid and binding in accordance with their terms, (b) to Seller's Knowledge are provided by carriers who are financially solvent, and (c) have not been subject to any lapse in coverage. No insurance carrier under any Insurance Policy has issued a reservation of rights with regard to or disputed its obligation with respect to any material claim.

2.17 Affiliate Transactions. Except as set forth in Schedule 2.17, there are no Contracts, transactions, or arrangements between Seller or another member of the Company Group, on the one hand, and any Affiliate of Seller or another member of the Company Group, on the other hand (each, an "Affiliate Contract"). Except as set forth in Schedule 2.17, no current officer, director, manager or member of Seller or another member of the Company Group or, to Seller's Knowledge, any current member or employee, or any "affiliate" or "associate" (as those terms are defined in Rule 405 promulgated under the Securities Act) of any such Person, has had, either directly or

indirectly, a material interest in: (a) any person or entity that purchases from, or sells, licenses or furnishes to, Seller or any other member of the Company Group any goods, property, technology, intellectual or other property rights or services; or (b) any Contract to which Seller or another member of the Company Group is a party or by which it may be bound.

2.18 Anti-Bribery; Anti-Money Laundering.

(a) Neither Seller, its Affiliates, nor any director, officer or employee of or, to Seller's Knowledge, agent, distributor, affiliate, representative or any other Person acting on behalf of, Seller or its Affiliates or the Business, has directly or indirectly made any bribes, rebates, payoffs, influence payments, kickbacks, illegal payments, illegal political contributions, or other payments, in the form of cash, gifts, or otherwise, or taken any other action, in violation of the Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010 or any other applicable anti-bribery or anti-corruption law (collectively, the "Anti-Bribery Laws").

(b) Seller has not received written notice that Seller or to Seller's Knowledge, its Affiliates, any director, officer or Employee of or, to Seller's Knowledge, agent, distributor, affiliate or representative acting on behalf of, Seller or its Affiliates or the Business, are or have been the subject of any investigation or inquiry by any Governmental Authority with respect to potential violations of Anti-Bribery Laws.

(c) Seller has not received any written notice that it, or to Seller's Knowledge, its Affiliates, any director, officer or Employee of or, to Seller's Knowledge, agent, distributor, affiliate or representative acting on behalf of, Seller or its Affiliates or the Business, have been the subject of current, pending, or, to Seller's Knowledge, threatened investigation, inquiry or enforcement proceedings for violations of Anti-Money Laundering Laws, or violated or received any notice, request or citation for any actual or potential noncompliance with Anti-Money Laundering Laws.

(d) The Business has been conducted in compliance with applicable Anti-Money Laundering Laws in all material respects.

2.19 Brokers' Fees. No member of the Company Group has incurred, or made commitments for, any brokerage, finders', investment bankers' or similar fee or commission in connection with the transactions contemplated by this Agreement.

2.20 Investigation. Seller has conducted its own independent investigation, review and analysis of Buyer. Seller acknowledges and agrees that (a) in making its decision to enter this Agreement and to consummate the transactions contemplated hereby, Seller (i) has relied solely upon its own investigation and the express representations and warranties of Buyer set forth in Article III hereof, (ii) has had such time as Seller deems necessary and appropriate to fully and completely review and analyze the information, documents and other materials related to Buyer that have been provided to Seller by or on behalf of Buyer or which are publicly available to Seller and (iii) has been provided an opportunity to ask questions of Buyer with respect to such information, documents and other materials and has received satisfactory answers to such questions and (b) none of Buyer or any other Person has made any representation or warranty as

to Buyer or this Agreement whatsoever, express or implied, except as expressly set forth in Article III hereof.

2.21 Disclaimer of Other Representations and Warranties. Except as previously set forth in this Article II (as modified by the Schedules), neither Seller nor any related Person or Person acting on behalf of any of them make any representation or warranty, express or implied, at law or in equity, with respect to Seller or any of its assets, liabilities or operations or the transactions contemplated by this Agreement, and any such other representations or warranties are hereby expressly disclaimed.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PARENT AND BUYER

Parent and Buyer represent and warrant to Seller (except as set forth in the applicable Schedules referenced below as well as any other section in this Agreement to which it is reasonably apparent from a reading of such Schedules without assuming any knowledge of the matters disclosed therein that such information is relevant to any other section) as follows:

3.1 Organization. Parent is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. The copies of the Certificate of Incorporation and Bylaws of Parent as most recently filed with the SEC Reports (as defined below) are true, correct, and complete copies of such documents as in effect as of the date of this Agreement. Parent is not in violation of any of the provisions of its Certificate of Incorporation and Bylaws. Buyer is a wholly-owned subsidiary of Parent and was formed solely for the purpose of entering into this Agreement and consummating the transactions contemplated hereby.

3.2 Contemplated Transactions; General Compliance.

(a) Enforceability; Authority. Each of Parent and Buyer has all requisite corporate power and authority to enter into this Agreement and the other agreements contemplated hereby to be executed and delivered by Parent or Buyer, as applicable, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Assuming due authorization, execution and delivery of this Agreement by the other Parties hereto, this Agreement constitutes a valid and binding obligation of Parent and Buyer, enforceable against Parent and Buyer in accordance with its terms, subject to the Creditor's Rights Exception. The execution, delivery and performance of this Agreement and the other agreements contemplated hereby to be executed and delivered by Parent and Buyer and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate action on the part of Parent and Buyer, and no other proceedings on the part of Parent or Buyer or their respective shareholders are necessary to authorize the execution, delivery or performance of this Agreement or the other agreements contemplated hereby.

(b) No Conflict. The execution and delivery of this Agreement and the other agreements contemplated hereby, and the consummation or performance of any of the transactions contemplated hereby or thereby will not: (i) conflict with or violate any provisions of the organizational documents of Parent or Buyer; or (ii) Breach any provisions of or result in the termination, maturation or acceleration of, any rights or obligations under any Contract, Order or Law, to which Parent or Buyer is subject, to which Parent or Buyer is a party or by which any of Parent's or Buyer's properties or assets is bound, except in the case of clause (ii) where such Breach, termination, maturation or acceleration would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Parent and its Subsidiaries, taken as a whole, or on Parent or Buyer's ability to consummate the transactions contemplated by this Agreement.

(c) Governmental Filings. No Governmental Filings are required in connection with the execution, delivery and performance of the transactions contemplated by this Agreement by Buyer, except for the consents stated in Schedule 2.2(d) and in respect of applicable requirements of the Federal Securities Laws.

3.3 Brokers' Fees. Neither Parent nor Buyer has incurred, or made commitments for, any brokerage, finders', investment bankers' or similar fee or commission in connection with the transactions contemplated by this Agreement.

3.4 Sarbanes-Oxley Act. Parent is in compliance in all material respects with applicable requirements of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and applicable rules and regulations promulgated by the SEC thereunder in effect as of the date of this Agreement.

3.5 Litigation. There is no pending or, to Parent's or Buyer's Knowledge, threatened Litigation or Order by or against Parent or Buyer (i) that challenges the transactions contemplated by this Agreement and the agreements contemplated hereby; or (ii) that seeks to enjoin or prohibit consummation of, or seeks other equitable relief with respect to, the transactions contemplated by this Agreement and the agreements contemplated hereby. No event has occurred or circumstance exists that (with or without notice or lapse of time or both) is reasonably likely to give rise to or serve as a basis for the commencement of any such Litigation or Order. There are no, and have been no, Orders against the Parent or the Buyer. There is no unsatisfied judgment or any open injunction binding upon the Parent or the Buyer that would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Parent or Buyer to enter into and perform their obligations under this Agreement or that would reasonably be expected to have a material adverse effect on Buyer and its Subsidiaries, taken as a whole.

3.6 Capitalization; Shares.

(a) As of March 31, 2021, the authorized capital stock of Parent consisted of 249,000,000 shares of common stock, par value $0.0001 per share, of which 115,387,140 were issued and outstanding.

(b) Immediately prior to the Closing, the Shares to be issued pursuant to this Agreement will be duly and validly reserved for issuance, and upon issuance will be validly issued and outstanding as fully paid and non-assessable shares in the capital of Parent and shall be free and clear of any lien, claim or encumbrance other than any such liens, claims or encumbrances contemplated by this Agreement and shall not be subject to any pre-emptive rights, rights of first offer, rights of first refusal or similar rights of any Person. The issuance of the Shares will comply in all material respects with all Laws, including state securities Laws and Federal Securities Laws.

3.7 SEC Reports; Financial Statements. Parent has timely filed or furnished, as applicable, all registration statements, prospectuses, reports, schedules, forms, statements, and other documents (including exhibits and all other information incorporated by reference) required to be filed or furnished by it with the SEC since January 1, 2020 (collectively, as they have been amended since the time of their filing and including all exhibits thereto, the "SEC Reports"). True, correct, and complete copies of all the SEC Reports are publicly available on EDGAR. As of their respective filing dates or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of the last such amendment or superseding filing (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), each of the SEC Reports complied as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act, and the Sarbanes-Oxley Act, and the rules and regulations of the SEC thereunder applicable to such SEC Reports. None of the SEC Reports, as of their respective dates (or if amended or superseded by a filing prior to the date of this Agreement or the Closing Date, then on the date of such filing), contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. None of the SEC Reports is the subject of ongoing SEC review or outstanding SEC investigation with respect to any accounting practices of Parent and there are no outstanding or unresolved comments received from the SEC with respect to any of the SEC Reports regarding any accounting practices of Parent. The audited financial statements and unaudited interim financial statements (including, in each case, the notes and schedules thereto) included in the SEC Reports complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by Form 10-Q of the SEC) and fairly presented (subject, in the case of the unaudited interim financial statements included therein, to normal year-end adjustments (but only if the effect of such adjustments would not, individually or in the aggregate, be material) and the absence of complete footnotes) in all material respects the financial position of Parent as of the respective dates thereof and the results of operations, changes in stockholders' equity and cash flows of Parent for the respective periods then ended. To the Knowledge of Parent, there are no SEC inquiries or investigations, other governmental inquiries or investigations, or internal investigations pending or, to the Knowledge of Parent, threatened, in each case regarding any accounting practices of Parent.

3.8 Reporting Company. Parent is a publicly-held company subject to reporting obligations pursuant to Section 13 of the Exchange Act, and the Parent Stock is registered pursuant to Section 12(b) of the Exchange Act.

3.9 Listing. The Parent Stock is listed on NASDAQ. Parent is in material compliance with all applicable NASDAQ listing and corporate governance rules.

3.10 Investment Company. Parent is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

3.11 Investigation. Each of Parent and Buyer acknowledges and agrees that it has conducted its own inquiry, independent investigation, review and analysis of Seller, the Assets and the Assumed Liabilities. Each of Parent and Buyer acknowledges and agrees that (a) in making its decision to enter this Agreement and to consummate the transactions contemplated hereby, each of Parent and Buyer (i) has relied upon such inquiry, investigation, review and analysis and the representations and warranties of Seller set forth herein, (ii) has formed an independent judgment concerning the Business and the Assets and the transactions contemplated by this Agreement, (iii) has had such time as Buyer and Parent deem necessary and appropriate to fully and completely review and analyze the information, documents and other materials related to Seller, the Business, the Assets and the Assumed Liabilities that have been provided to Buyer by or on behalf of Seller or which are publicly available to Buyer and Parent and (iv) has been provided an opportunity to ask questions of Seller with respect to such information, documents and other materials and has received satisfactory answers to such questions, (b) except as expressly set forth in this Agreement, Buyer shall acquire the Assets and assume the Assumed Liabilities in "as is" condition and on a "where is" basis and (c) none of Seller nor any other Person has made any representation or warranty as to Seller, the Assets or the Assumed Liabilities or this Agreement whatsoever, express or implied, except as expressly set forth in Article II hereof.

3.12 Disclaimer of Other Representations and Warranties. Except as previously set forth in this Article III, Buyer makes no representation or warranty, express or implied, at law or in equity, with respect to it or any of its assets, liabilities or operations, and any such other representations or warranties are hereby expressly disclaimed.

ARTICLE IV

COVENANTS

4.1 Conduct of Business Prior to the Closing. Except as contemplated on Schedule 4.1, or with the written consent of Buyer, which may not be unreasonably withheld, conditioned or delayed, during the period from the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with its terms, Seller shall (i) conduct the Business in the ordinary course of business, (ii) use commercially reasonable efforts to preserve the Business's business organization and relationships with third parties (including lessors, licensors, suppliers, distributors and customers) and keep available the service of their present employees and service providers, and (iii) continue to obtain all necessary consents and provide required notices in connection with any Acquired Agreement to be acquired by Buyer in this Agreement. Without limiting the generality of the foregoing, and except as otherwise permitted in this Agreement or with the prior written consent of Buyer (which shall not be unreasonably withheld, conditioned or delayed), Seller shall not, during the period from the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with its terms, directly or indirectly do, or

propose or commit to do, or otherwise cause to occur, any of the following with respect to any member of the Company Group:

(a) make any change in or amendment to its organizational documents;

(b) declare, set aside, make or pay any dividend or other distribution, other than distributions paid solely in cash;

(c) (i) except in the ordinary course of business, (A) enter into any Contract that, had it been entered into prior to the date of this Agreement, would be a Material Contract or an Affiliate Contract, or (B) materially amend, modify, terminate or cancel (x) any existing Material Contract or (y) any Contract that, had it been entered into or amended prior to the date of this Agreement, would be a Material Contract, (ii) fail to perform any of its material obligations under all Contracts relating to or affecting the Assets or Business, or (iii) amend, terminate or cancel any Acquired Agreement, any Acquired IP or Acquired Lease (other than the termination of any such agreement in accordance with its terms);

(d) enter into any agreement that restricts the ability of any member of the Company Group to engage or compete in any line of business, or enter into any agreement that restricts the ability of any member of the Company Group to enter a new line of business;

(e) except in the ordinary course of business, discontinue any business material to the Business or sell, lease, license, transfer or otherwise dispose or permit the cancellation, abandonment or dedication to the public domain of any of the material property rights (including Intellectual Property) or assets of the Business, other than as required pursuant to existing Contracts or commitments;

(f) acquire (by merger, consolidation, purchase, or other acquisition of equity interests or assets) any Person or any material properties or assets of any Person, except for acquisitions of properties, assets, inventory and equipment in the ordinary course of business;

(g) incur any Indebtedness, issue any debt securities, or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any Person;

(h) make any loans, advances or capital contributions to, or investments in, any other Person, or forgive, cancel or compromise any debt or claim, in each case, other than in the ordinary course of business;

(i) fail to pay its debts, Taxes and other obligations when due;

(j) except as required by applicable Law or the terms of any Company Benefit Plan as in effect on the date of this Agreement, (A) amend, terminate, enter into or adopt any Company Benefit Plan (or any arrangement that would be a Company Benefit Plan if

it was in effect on the date hereof) or any collective bargaining agreement; (B) grant or increase the compensation or benefits or other pay (including base salary or hourly rate, bonus, severance, termination, commissions and incentive compensation) of any Business Employee or other individual service provider of the Business; (C) pay, grant, or increase any severance or termination pay to (or otherwise amend any such existing arrangement with) any current or former Business Employee or other individual service provider of the Business; (D) accelerate the vesting or payment of, or fund or in any other way secure the payment, compensation or benefits under, any Company Benefit Plan or otherwise; or (E) grant any new awards, or modify the terms of any outstanding awards under any Company Benefit Plan or otherwise;

(k) hire any employee other than any hourly employee in the ordinary course of business;

(l) modify any employment arrangement with any Business Employee or terminate the employment of any Business Employee, other than (y) terminations for cause;

(m) implement or announce any group employee layoffs, plant closings, reductions in force, furloughs or temporary layoffs that would trigger notice obligations under the WARN Act;

(n) cancel, compromise or settle any material Litigation, or intentionally waive or release any material rights, with respect to the Business;

(o) make any changes to its accounting principles or practices, other than as may be required by Law or GAAP;

(p) other than in the ordinary course of business or consistent with past practices, change in any material respect the policies or practices of the Business with regard to the extension of discounts or credit to customers or collection of receivables from customers;

(q) change or revoke any Tax election or change any method of accounting for Tax purposes; in each case with respect to the Business or Assets to the extent such election or method of accounting would be binding on Buyer following the Closing Date;

(r) violate any applicable Law or Order;

(s) enter into or adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization, merger or consolidation or other reorganization; or

(t) agree, authorize, recommend, propose or announce an intention to do any of the foregoing, or enter into any contract, agreement, commitment or arrangement to do any of the foregoing.

4.2 Access to Information. Between the date of this Agreement and the earlier of the Closing and the termination of this Agreement in accordance with its terms, Seller shall (a) afford the officers, employees, accountants, counsel, financial advisors and other representatives of Buyer reasonable access during normal business hours to such of the properties, books, Contracts, commitments, records and officers of Seller and any other member of the Company Group as Buyer may reasonably request and (b) furnish Buyer and its representatives with such financial, operating and other data related to the Business as Buyer or any of its representatives may reasonably request; provided that (i) such access shall be exercised in such a manner as to not interfere unreasonably with the conduct of the Business, (ii) the Party granting access may withhold any document (or portions thereof) or information (x) that is subject to the terms of a non-disclosure agreement with a third party, (y) that may constitute privileged attorney-client communications or attorney work product and the transfer of which, or the provision of access to which, as reasonably determined by such Party's counsel, constitutes a waiver of any such privilege or (z) if the provision of access to such document (or portion thereof) or information, as determined by such Party's counsel, would reasonably be expected to conflict with applicable Law.

4.3 SEC Matters. Seller shall, and shall cause each other member of the Company Group to, as promptly as reasonably practicable, provide Parent with all information concerning Seller and any other member of the Company Group, its respective businesses, management, operations and financial condition, in each case, that is reasonably required to be included in any form, report, schedule or other document filed by Parent with the SEC and all amendments, modifications and supplements thereto. It is the sole responsibility of Parent to interpret and determine appropriate SEC guidance as it applies to Parent and Buyer and to timely communicate requirements to Seller. Seller shall fully cooperate and make commercially reasonable efforts to timely provide any information to Parent that is required to be included within any SEC filing. Seller shall make, and shall cause each member of the Company Group to make, their Affiliates, directors, officers, managers, employees, accountants and auditors reasonably available to Parent and its counsel in connection with the drafting of any filings to be made by Parent under the Federal Securities Laws.

4.4 Indebtedness Payoff. On or prior to the Closing Date, Seller shall obtain and provide to Parent a true and correct copy of a payoff letter with respect to each of the items listed on Schedule 2.4 (collectively, the "Payoff Letters") duly executed by each borrower, creditor and other party thereunder, in customary form and providing for the termination of such Indebtedness and related documents and the termination and release of all Encumbrances securing such Indebtedness.

4.5 Satisfaction of Closing Conditions. Subject to the terms and conditions of this Agreement, (i) each Party shall use its commercially reasonable efforts to cause the conditions set forth in Article VI to be satisfied and to take or cause to be taken all actions, to do or cause to be done and to assist and cooperate with the other Parties hereto in doing all things necessary, proper or advisable under applicable Laws and regulations to consummate the transactions contemplated herein in the most expeditious manner practicable, including: (x) obtaining applicable consents, waivers or approvals of, or providing appropriate and timely notice of the transactions set forth in this Agreement to, any Third Party of the Acquired Agreements, Acquired IP, Acquired Lease and other Assets to be acquired by Buyer pursuant to this Agreement; and (y) the execution and

delivery of such instruments, and the taking of such other actions as the other Parties may reasonably require in order to carry out the intent of this Agreement (including making any Governmental Filings).

4.6 Books and Records. From and after the Closing, Buyer agrees that it shall preserve and keep the records acquired or otherwise held by it or its Affiliates as of the Closing Date relating to the Business, the Assets and the Assumed Liabilities for a period of seven (7) years from the Closing Date. Thereafter, Buyer shall have the right to destroy such records.

4.7 Confidentiality.

(a) The Parties and their respective representatives shall treat all nonpublic information obtained in connection with this Agreement and the transactions contemplated hereby as confidential in accordance with the terms of the Confidentiality Agreement. The terms of the Confidentiality Agreement shall continue in full force and effect until the Closing, at which time such Confidentiality Agreement shall terminate. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement shall continue in full force and effect as provided in Section 8.2 in accordance with its terms.

(b) From and after the Closing, Seller will keep in strict confidence, and will not, directly or indirectly, except as required by Law or, if applicable, in the course of any member of Seller performing his or her duties after the Closing as a partner, officer or employee of Buyer, at any time, disclose, furnish, disseminate, make available or use any trade secrets or confidential business and technical information of the Business or Buyer, any of its Subsidiaries, affiliated or related companies, or any of their respective clients, customers or vendors, whatever its nature and form and without limitation as to when or how Seller may have acquired such information. Such confidential information includes the unique selling and servicing methods and business techniques, training, service and business manuals, promotional materials, training courses and other training and instructional materials, vendor and product information, customer and prospective customer lists, other customer and prospective customer information and other confidential business information with respect to the Business or Buyer. Such confidential information does not include any information that is or becomes publicly known other than as a result of a Breach of Seller's obligations (whether under this Agreement or otherwise) or any confidential information included in or retained by the Seller solely in connection with the Excluded Assets. Seller specifically acknowledges that all such confidential information, whether reduced to writing, maintained on any form of electronic media or maintained in the mind or memory of such Person and whether compiled by Seller, derives independent economic value from not being readily known to or ascertainable by proper means by others who can obtain economic value from its disclosure or use, that reasonable efforts have been made to maintain the secrecy of such information, that such information will be the sole property of Buyer and that any retention and use of such information by Seller (except, if applicable, in the course of any member of Seller performing his or her duties after the Closing as a partner, officer or employee of Buyer) will constitute a misappropriation of Buyer's trade secrets and a Breach of this Agreement. In the event that Seller or its representatives becomes legally compelled to disclose any information referred to in this Section 4.7(a), Seller shall provide Buyer with prompt written notice before such disclosure, to the extent legally permitted, sufficient to enable Buyer either to seek a

protective order, at Buyer's expense, or another appropriate remedy preventing or prohibiting such disclosure.

4.8 Non-Competition; Non-Solicitation; Non-Disparagement.

(a) For a period of three (3) years commencing on the Closing Date, neither Seller nor any Owner shall, directly or indirectly, (i) engage in or assist others in engaging in any Competitive Activity in the Territory except on behalf of Buyer or (ii) take any action with the intent of interfering in any material respect with the business relationships (whether formed before or after the date of this Agreement) between Buyer and processing companies, businesses and Third Parties that have been introduced to processing companies by Seller, any Owner or Buyer (or by other parties on behalf of Seller, any Owner or Buyer), or customers and suppliers of Buyer (including, for the avoidance of doubt, with respect to the Business and the Assets). For purposes of this Section 4.8(a), "Territory" means North America.

(b) For a period of three (3) years commencing on the Closing Date, neither Seller nor any Owner shall, directly or indirectly, hire, solicit or induce, or attempt to hire, solicit or induce, any employee of Buyer or its Subsidiaries or encourage any such employee to leave or reduce such employment or hire any such employee who has left such employment (including, for the avoidance of doubt, employees of the Business); provided that nothing in this Section 4.8(b) shall prevent Seller or any Owner from soliciting or hiring (x) any employee whose employment has been terminated by Buyer or its Subsidiaries without cause; or (y) after 120 calendar days from the date of termination of employment, any employee whose employment has been terminated by the employee. Nothing in this Section 4.8(b) shall prevent Seller or any Owner from hiring any employee who responds to a general advertisement or solicitation for employment, including but not limited to advertisements or solicitations through newspapers, trade publications, periodicals, radio or internet database.

(c) For a period of three (3) years commencing on the Closing Date, neither Seller nor any Owner shall, directly or indirectly, solicit, call on or entice, or attempt to solicit, call on or entice, any processing companies, contracting parties that have been introduced to processing companies by Seller, any Owner or Buyer (or by other parties on behalf of Seller, any Owner or Buyer), customers, suppliers or other Third Parties that have conducted business with Buyer or its Subsidiaries (including, for the avoidance of doubt, any contracting parties, processing companies or Third Parties that have been introduced to processing companies that constitute a part of the Assets or the Business), in each case for purposes of diverting business or services from Buyer or its Subsidiaries; provided however this clause (c) shall not prohibit the Seller or any Owner from soliciting or hiring any person who responds to a general advertisement or solicitation, including but not limited to advertisements or solicitations through newspapers, trade publications, periodicals, radio or internet database.

(d) Seller and each Owner acknowledges that a Breach or threatened Breach of this Section 4.8 may give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a Breach or a threatened Breach by Seller or any Owner of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such Breach, be entitled to seek equitable

relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(e) Seller, each Owner and Buyer agree and intend that Seller's and each Owner's obligations under this Section 4.8 be tolled during any period that Seller or any Owner is in Breach of any of the obligations under this Section 4.8, so that Buyer is provided with the full benefit of the restrictive periods set forth herein.

(f) For a period of three (3) years commencing on the Closing Date, Seller and each Owner will refrain from, in any manner, directly or indirectly, all conduct, oral or otherwise, that disparages or damages or could reasonably be expected to disparage or damage the reputation, goodwill, or standing in the community of the Buyer, its Subsidiaries, the Business or the Assets. It shall not however be a breach of this Subsection to testify truthfully in any judicial, administrative or arbitration proceeding or to make statements or allegations in legal filings, depositions or responses to interrogatories that are based on reasonable belief and are not made in bad faith. Notwithstanding anything herein to the contrary, nothing in this paragraph shall prevent Buyer or Parent from exercising its authority or enforcing its rights or remedies hereunder or that Buyer or Parent may otherwise be entitled to enforce or assert under any other agreement or applicable Law, or limit such rights or remedies in any way.

(g) For a period of three (3) years commencing on the Closing Date, Buyer and Parent will refrain from, in any manner, directly or indirectly, all conduct, oral or otherwise, that disparages or damages or could reasonably be expected to disparage or damage the reputation, goodwill, or standing in the community of Seller and each Owner. It shall not however be a breach of this Subsection to testify truthfully in any judicial, administrative or arbitration proceeding or to make statements or allegations in legal filings, depositions or responses to interrogatories that are based on reasonable belief and are not made in bad faith. Notwithstanding anything herein to the contrary, nothing in this paragraph shall prevent Seller or an Owner from exercising its authority or enforcing its rights or remedies hereunder or that Seller or an Owner may otherwise be entitled to enforce or assert under any other agreement or applicable Law, or limit such rights or remedies in any way.

(h) Seller and each Owner acknowledges that the restrictions contained in this Section 4.8 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 4.8 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this Section 4.8 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

4.9 Further Assurances. The Parties shall cooperate reasonably with the other Parties hereto and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information, (b) execute and deliver to each other such other documents, and (c) do such other acts and things, all as any other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the transactions contemplated hereby.

4.10 Transfer Taxes**.** All Transfer Taxes shall be paid when due and shall be borne 50% by Seller and 50% by Buyer. Buyer shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Seller shall reasonably cooperate with respect thereto), and the non-filing party shall cooperate with the filing party in filing such Tax Returns.

4.11 Apportioned Obligations. All real or personal property and similar ad valorem Taxes for a taxable period that includes the Closing Date ("Apportioned Obligations"), shall be apportioned between the portion of such taxable period ending on the day before the Closing Date (the "Pre-Closing Tax Period") and the portion beginning on the Closing Date (the "Post-Closing Tax Period") on a per diem basis. Seller shall be liable for any such Apportioned Obligations apportioned to the Pre-Closing Tax Period and Buyer shall be liable for any such Apportioned Obligations apportioned to the Post-Closing Tax Period.

4.12 Cooperation as to Tax Matters. Buyer and Seller shall reasonably cooperate, and shall cause their respective Affiliates, officers, employees, agents, auditors and other representatives to reasonably cooperate, at the requesting party's expense with respect to reasonable out of pocket expenses, in preparing and filing all Tax Returns and in resolving all disputes and audits with respect to all taxable periods relating to Taxes for taxable periods ending on or before the Closing Date or beginning on or before the Closing Date, including by retaining, maintaining and making available to each other all records to the extent reasonably necessary in connection with Taxes and making employees reasonably available on a mutually convenient basis to provide additional information or explanation or to testify at proceedings relating to Taxes.

4.13 No Parent Stock Transactions. From and after the date of this Agreement until the Closing, neither Seller nor any other member of the Company Group nor any of their Affiliates, directly or indirectly, shall engage in any transactions involving the securities of Parent. Seller shall use commercially reasonable efforts to require each of its Affiliates and representatives to comply with the foregoing sentence.

4.14 Audit. Seller shall cooperate with Parent (at Parent's expense) in the event that Parent needs to obtain an audit of the Company Group or Seller for any period ending prior to Closing; provided that the Parent shall make available any Transferred Employees necessary to assist Seller in connection therewith.

4.15 Change of Name or Liquidation. Unless otherwise agreed to by Buyer, (i) Seller shall (or shall cause the relevant members of the Company Group to) change their respective name(s) to a name that does not include "Flow", "Cape Cod", "ProMerchant" or any other permutation thereof, and that is otherwise not a name that may suggest an affiliation of any kind with the Business or Assets or (ii) Seller shall conduct no business under such name(s) other than

to wind down and liquidate such members of the Company Group or to discharge its obligations under this Agreement in connection with its indemnification provisions.

4.16 Updated Schedules Delivery. The Parties shall confer and may reasonably agree to updated Schedules, which would amend and replace the Schedules to this Agreement in their entirety, within five (5) Business Days after the date hereof; provided, however, that such updated Schedules shall not cause any change in or addition to any schedule, except for the disclosure schedules setting forth any and all exceptions or supplemental information to the representations and warranties in Article II unless Buyer consents to such changes or additions in writing.

ARTICLE V

EMPLOYEES AND EMPLOYEE BENEFIT PLANS

5.1 Employee Matters.

(a) Effective as of the Closing Date, Buyer shall offer, or cause its applicable Affiliate to offer, at-will employment to each Business Employee. Each Business Employee who accepts Buyer's or its Affiliate's offer of employment pursuant to this Section 5.1 shall be referred to herein as a "Transferred Employee".

(b) Following the Closing, Seller and its Affiliates shall retain and be responsible for (and shall indemnify and hold the Buyer from and against) (i) any and all Liabilities, whenever arising or occurring, under the Company Benefit Plans (other than any Standalone Plan), (ii) any and all Liabilities relating to the employment, compensation and employee benefits of the Transferred Employees which arise or are incurred prior to the Closing and (iii) any and all Liabilities relating to any Seller employee who is not a Transferred Employee, whenever arising or occurring. Except as set forth in the immediately preceding sentence, Buyer shall be solely responsible for all Liabilities related to the Transferred Employees that relate exclusively to periods after the Closing Date.

(c) This Section 5.1 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 5.1, expressed or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 5.1. Without limiting the foregoing, no provision of this Section 5.1 will (i) be treated as an amendment to any particular Company Benefit Plan, (ii) prevent Buyer from amending or terminating any of its benefit plans in accordance their terms, (iii) prevent Buyer or its Affiliates, on or after the Closing Date, from terminating the employment of any Transferred Employee, or (iv) confer any rights or remedies (including third-party beneficiary rights) on any current or former director, Business Employee, employee, or individual service provider of Seller, Buyer or any of their respective Affiliates or any beneficiary or dependent thereof or any other Person.

ARTICLE VI

CLOSING CONDITIONS

6.1 Conditions to Obligations of Parent and Buyer. Except as may be waived in writing by Parent and Buyer, the obligations of Parent and Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Buyer of the following conditions at or prior to the Closing:

(a) Governmental Orders. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Law which is in effect and has the effect of making the transactions contemplated by this Agreement unlawful or otherwise restraining or prohibiting consummation of such transactions.

(b) Representations and Warranties. The representations and warranties of Seller contained in Article II shall be true and correct as of the date hereof and as of the Closing Date, as though made on and as of the Closing Date, except (i) that representations and warranties that are made as of a specific date need be true and correct only as of such date and (ii) for breaches and inaccuracies of representations and warranties of Seller other than the Fundamental Representations, the effect of which would not, individually or in the aggregate, result in a Material Adverse Effect.

(c) Covenants. Seller shall have performed and complied with in all material respects all covenants and agreements hereunder required to be performed or complied with by them on or prior to the Closing Date.

(d) Closing Certificate. Seller shall have delivered to Buyer a certificate, executed by an officer of Seller certifying to the satisfaction of the conditions specified in Section 6.1(b) above.

(e) No Material Adverse Effect. Since the date of this Agreement, no Material Adverse Effect shall have occurred and be continuing.

(f) Payoff Letters. Seller shall have delivered or caused to be delivered to Buyer the Payoff Letters providing for the matters set forth in Section 1.10(a)(x).

(g) Key Employees. Each of the Key Employees shall have executed standard employee at-will onboarding documentation, satisfactory to Buyer.

(h) Consents. Seller shall have delivered to Buyer evidence of the consents, assignments, compliance with notices regarding rights of first refusals or similar rights, and other items set forth on Schedule 1.10(a)(vii), in each case, in form and substance reasonably satisfactory to Buyer.

(i) FIRPTA Certificate/IRS Form W-9. Seller shall have delivered to Buyer a certificate pursuant to Treasury Regulations Section 1.1445-2(b) evidencing that Seller is

not a foreign person within the meaning of Section 1445 and Section 1446 of the Code, and true and correct copy of Seller's IRS Form W-9.

(j) Due Diligence. Buyer shall be satisfied in its sole discretion with its due diligence review of the Seller, each member of the Company Group, the Business, the Assets, and the Assumed Liabilities.

(k) NASDAQ Approval. Buyer shall have received the NASDAQ Approval.

(l) Other Closings. The closing of the transactions contemplated by the Other Asset Purchase Agreements shall have occurred (or shall occur concurrently with the Closing).

(m) Approval of Secured and Unsecured Creditor of Buyer's Two Credit Facilities. Buyer shall have obtained the consent (or waiver) of Luxor Capital Group, L.P. to close the Agreement as well as to close the Other Asset Purchase Agreements, if Buyer determines that such consent (or waiver) is required.

(n) Board of Director Approval. Parent's Board of Directors shall have approved, in its sole discretion, the closing of the Agreement as well as the closing of the Other Asset Purchase Agreements.

6.2 Conditions to Obligations of Seller. Except as may be waived in writing by Seller, the obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Seller of the following conditions at or prior to the Closing:

(a) Governmental Orders. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Law which is in effect and has the effect of making the transactions contemplated by this Agreement unlawful or otherwise restraining or prohibiting consummation of such transactions.

(b) Representations and Warranties. The representations and warranties of Parent and Buyer contained in Article IV shall be true and correct as of the date hereof and as of the Closing Date, as though made on and as of the Closing Date, except (i) that representations and warranties that are made on and as of a specific date need be true and correct only as of such date and (ii) for breaches and inaccuracies that would not prevent or materially impair or delay consummation by Buyer of the transactions contemplated hereby.

(c) Covenants. Each of Parent and Buyer shall have performed and complied with in all material respects all covenants and agreements hereunder required to be performed or complied with by it on or prior to the Closing Date.

(d) Closing Certificate. Each of Parent and Buyer shall have delivered to Seller a certificate, executed by an officer of Parent or Buyer (as applicable), certifying to the satisfaction of the conditions specified in Section 6.2(b) above.

ARTICLE VII

INDEMNIFICATION

7.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and remain in full force and effect until the Holdback Release Date; provided that the Fundamental Representations shall survive until the date that is four (4) years from the Closing Date. All covenants and agreements of the Parties contained herein which are to be performed prior to the Closing shall terminate at the Closing, except that the covenants and agreements set forth in Section 4.1, shall survive the Closing and remain in full force and effect until the Holdback Release Date. All other covenants and agreements shall survive for the duration of their terms. Notwithstanding anything to the contrary in this Agreement, including Section 7.4, any claim for Fraud may be brought within the applicable statute of limitations and nothing herein shall limit or reduce the amounts recoverable for any such claim. If a Claim Notice has been given by an Indemnified Party to an Indemnifying Party within the applicable limitation period provided for in this Section 7.1, the end of the survival period that would otherwise apply to such claim shall be extended (solely with respect to the claim underlying such Claim Notice) until such later date as such claim has been fully and finally resolved.

7.2 Indemnification by Seller. From and after the Closing, subject to the terms and conditions of this Article VII, Seller shall indemnify and defend Buyer, its Affiliates and its representatives (collectively, the "Buyer Indemnified Parties") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, Buyer Indemnified Parties based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or Breach of any of the representations or warranties of Seller contained in this Agreement (except for representations and warranties made as of a specific date, the inaccuracy or Breach of which will be determined with reference to such date);

(b) any Breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement; and

(c) the Excluded Liabilities.

7.3 Indemnification by Buyer. From and after the Closing, subject to the terms and conditions of this Article VII, Parent and Buyer shall jointly and severally indemnify and defend Seller, the Owners, their Affiliates and their representatives (collectively, the "Seller Indemnified Parties") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnified Parties based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or Breach of any of the representations or warranties of Parent or Buyer contained in this Agreement as of the Closing Date (except for representations and warranties made as of a specific date, the inaccuracy or Breach of which will be determined with reference to such date);

(b) any Breach or non-fulfillment of any covenant, agreement or obligation to be performed by Parent or Buyer pursuant to this Agreement; and

(c) the Assumed Liabilities.

7.4 Limitation on Indemnification. The party making a claim under this Article VII is referred to as the "Indemnified Party" and the party against whom such claims are asserted under this Article VII is referred to as the "Indemnifying Party." The indemnification provided for in Section 7.2 and Section 7.3 hereof shall be subject to the following limitations:

(a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification under Section 7.2(a) or Section 7.3(a), as the case may be, until the aggregate amount of all Losses suffered in respect of indemnification under Section 7.2(a) or Section 7.3(a) exceeds $75,000 (the "Deductible"), in which event the Indemnifying Party shall be liable for all such Losses in excess of the Deductible.

(b) The aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 7.2(a) or Section 7.3(a), as the case may be, shall not exceed the sum of (x) the Indemnity Escrow Holdback Amount plus (y) the aggregate Market Value of the Indemnity Holdback Shares (the "Cap").

(c) Notwithstanding the foregoing, the limitations set forth in Sections 7.4(a) and (b) above shall not apply to Losses arising out of or resulting from any Breach of the Fundamental Representations; provided that in no event shall the aggregate liability of Seller for all Losses arising under this Agreement exceed the Purchase Price actually received by Seller.

(d) For purposes of this Article VII, calculations of the amount of any Losses arising out of or resulting from any inaccuracy, Breach or non-fulfillment shall be made without regard to any reference to "Material Adverse Effect," "materiality" or any other correlative materiality qualifications.

(e) The amount of any and all Losses under this Article VII shall exclude exemplary, punitive, special, consequential and indirect damages, loss of income or revenue, loss of anticipated or future business or profits, loss of reputation, opportunity cost, diminution in value and Losses based on any type of multiplier (including "multiple of EBITDA," "multiple of profits" or "multiple of cash flow") or other similar valuation methodology, except to the extent actually awarded to a Third Party in an Action brought against an Indemnified Party.

(f) The amount of Losses recoverable from an Indemnifying Party hereunder shall be calculated net of the amount of any insurance proceeds, indemnification payments

or reimbursements actually received by the Indemnified Party from Third Parties in respect of such Losses.

7.5 Notice of Claims.

(a) Any Indemnified Party shall, within the limitation period provided for in Section 7.1, give, in the case of indemnification sought by: (i) any Seller Indemnified Party, to Buyer; or (ii) any Buyer Indemnified Party, to Seller, a written notice (a "Claim Notice") that includes a general description of the facts giving rise to the claim for indemnification hereunder that is the subject of the Claim Notice (if and to the extent then known), a good faith estimate of the amount of such claim and a reference to the provision of this Agreement upon which such claim is based along with disclosure of any policy of insurance which may afford coverage for all or part of such claim. A Claim Notice shall be given promptly following the claimant's determination that facts or events give rise to a claim for indemnification hereunder; provided that the failure to give such written notice (i) shall not relieve any Indemnifying Party of its obligations under this Article VII, except to the extent it shall have been actually and materially prejudiced by such failure, and (ii) shall not relieve any Indemnifying Party of any other obligation or liability it may have to any Indemnified Party otherwise than under this Article VII.

(b) An Indemnifying Party shall have sixty (60) days after the receipt of any proper Claim Notice pursuant hereto to: (i) agree to the amount set forth in the Claim Notice (the "Indemnification Amount") and to pay or cause to be paid such amount to such Indemnified Party (A) in the case of a claim by the Seller Indemnified Parties, by wire transfer in immediately available funds, or (B) in the case of a claim by the Buyer Indemnified Parties, (1) by the Buyer and Seller jointly directing the Escrow Agent to release from the Indemnity Escrow Holdback Amount an amount equal to eighty percent (80%) of the Indemnification Amount, and (2) by Seller transferring back to Parent or a nominee thereof (for no consideration) from the Indemnity Holdback Shares the number of shares of Parent Stock equal to (x) twenty percent (20%) of the Indemnification Amount divided by (y) the Market Value as of the date of the Claim Notice; or (ii) provide such Indemnified Party with written notice that it disagrees with the claim set forth in the Claim Notice (the "Dispute Notice"). For a period of sixty (60) days after the giving of any Dispute Notice, a representative of the Indemnifying Party and the Indemnified Party shall negotiate in good faith to resolve the matter. In the event that the controversy is not resolved within sixty (60) days after the date the Dispute Notice is given, the Parties may thereupon proceed to pursue any and all available remedies at law. If the Indemnifying Party agrees to the Claim Notice pursuant to clause (i) above or fails to provide a timely Dispute Notice pursuant to clause (ii) above, then: (x) if the Indemnified Party is a Buyer Indemnified Party, Buyer shall be entitled to the indemnification payment released by the Escrow Agent as contemplated by Section 7.5(b)(i)(B), or (y) if the Indemnified Party is a Seller Indemnified Party, then Buyer shall, using its own immediately available funds, pay Seller the amount set forth in the Claim Notice.

7.6 Third Party Claims.

(a) If a claim by a third Person (including any audit, notice or request for information from a Tax Regulatory Authority) (a "Third Party Claim") is made against an Indemnified Party, and if such Indemnified Party intends to seek indemnity with respect thereto under this Article VII,

such Indemnified Party shall promptly notify: (i) Buyer, in the case of indemnification sought by any Seller Indemnified Party; or (ii) Seller, in the case of indemnification sought by any Buyer Indemnified Party, in writing of such claims (a "Third Party Claim Notice"). The Third Party Claim Notice shall include a general description of the facts giving rise to the claim for indemnification hereunder that is the subject of the Third Party Claim Notice, (if and to the extent then known) the amount or an estimate of the amount of such claim and all material documentation relevant to the claim described in the Third Party Claim Notice. A Third Party Claim Notice shall be given promptly following the claimant's determination that facts or events give rise to a claim for indemnification hereunder; provided that in respect of any Action at law or suit in equity by or against a third Person as to which indemnification will be sought shall be given promptly after the Action or suit is commenced; and provided, further, that the failure to give such written notice (i) shall not relieve any Indemnifying Party of its obligations under this Article VII, except to the extent it shall have been actually and materially prejudiced by such failure, and (ii) shall not relieve any Indemnifying Party of any other obligation or liability it may have to any Indemnified Party otherwise than under this Article VII.

(b) The Indemnifying Party may at any time deliver written notice to the Indemnified Party that it intends to undertake, conduct and control, through counsel of its own choosing of recognized standing and competence and at its own expense, the settlement or defense thereof, and the Indemnified Party shall cooperate with it in connection therewith; provided that the Indemnifying Party shall only be entitled to undertake, conduct and control such settlement or defense if it acknowledges, in writing, to the Indemnified Party its obligation to fully indemnify the Indemnified Party hereunder against any Losses that may result from such Third Party Claim (subject to, if applicable pursuant to Section 7.4, the Cap and Deductible). If the Indemnifying Party undertakes to conduct and control the settlement or defense of a Third Party Claim, it shall take all steps reasonably necessary in the settlement or defense of such Third Party Claim, and shall diligently pursue the resolution of such Third Party Claim. Should an Indemnifying Party elect to assume the defense of a Third Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party elects to assume the defense of a Third Party Claim, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood, however, that the Indemnifying Party shall control the defense. If the Indemnifying Party does not notify the Indemnified Party in writing that it elects to undertake the defense thereof, the Indemnified Party shall have the right to undertake the defense or prosecution of the claim through counsel of its own choice, and the reasonable fees and expenses incurred in connection with such defense or prosecution shall be considered Losses hereunder with respect to the subject matter of such claim, indemnifiable to the extent provided in this Article VII. Notwithstanding the foregoing, the Indemnifying Party shall be entitled to assume the settlement or defense of a Third Party Claim under this Section 7.6(b) only if: (A) the Third Party Claim involves solely monetary damages and (B) to the extent that the Cap applies, the potential Losses relating to such Third Party Claim are less than the Cap.

(c) On the first Business Day following the Holdback Release Date, (i) Buyer and Seller shall jointly instruct the Escrow Agent to release to Seller in accordance with the Escrow Agreement the remaining amount of the Indemnity Escrow Holdback Amount net of the amount

of any unresolved or pending claims properly asserted by Buyer prior to the Holdback Release Date ("Unresolved Claims"), in cash, by wire transfer of immediately available funds to the account designated in writing by Seller, and (ii) the remaining number of Indemnity Holdback Shares, net of the number of Indemnity Holdback Shares corresponding to the amount by which the Unresolved Claims exceeds the available balance of the Indemnity Escrow Holdback Amount, shall be released from the Indemnity Holdback Restriction. Buyer or Parent shall cause the record ownership of the released Indemnity Holdback Shares to be in the name of the Seller or in the names and percentage allocations of such other Persons as Seller may request via written notice to Buyer and Parent on a date that is no less than five (5) Business Days prior to the Holdback Release Date, all of whom shall be members of the Seller; provided, that, Buyer, Parent and Seller agree that if Indemnity Holdback Shares are released directly to the members of Seller, each of the parties hereto shall treat each such issuance of shares for all Tax reporting purposes as a transfer to Seller, followed by a transfer by Seller to its members. Thereafter, any remaining Indemnity Escrow Holdback Amount retained by the Escrow Agent and any remaining Indemnity Holdback Shares that continue to be subject to the Indemnity Holdback Restriction with respect to the Unresolved Claims (if any), shall be released by the Escrow Agent or from the Indemnity Holdback Restriction, as applicable, upon resolution of such Unresolved Claims.

(d) Neither Buyer nor Seller shall settle or consent to the entry of judgment of any Third Party Claim without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, withheld or delayed, unless such settlement or judgment (i) does not provide for injunctive or other equitable relief and (ii) will be fully satisfied by the Indemnifying Party.

7.7 Tax Treatment. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

7.8 No Double Recovery. In no event shall the Indemnified Party be entitled under this Agreement to the recovery of the same Loss more than once, regardless of whether the claim for the Loss may be brought under multiple provisions of this Agreement. No amount may be recovered as a Loss with respect to any particular matter to the extent such amount with respect to such matter was expressly listed on the Closing Statement (as finally determined pursuant to Section 1.9(b)) or specifically taken into account as part of the Purchase Price adjustments under Sections 1.9(b) or 1.9(c).

7.9 Exclusive Remedy. Subject to Section 9.12, the Parties acknowledge, covenant and agree that, from and after the Closing, their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein, shall be pursuant to the indemnification provisions set forth in this Article VII. Nothing in this Section 7.9 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled pursuant to Section 9.12. Notwithstanding anything to the contrary in this Agreement, nothing will prohibit, limit or in any way restrict claims or remedies for Fraud in connection with any breach of any representation, warranty, covenant, agreement or obligation set forth herein (or in any exhibit or schedule hereto or in the Schedules) or otherwise relating to the subject matter of this Agreement.

ARTICLE VIII

TERMINATION

8.1 Termination. This Agreement may be terminated as follows:

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

(b) by either Buyer or Seller if the Closing shall not have occurred on or before September 15, 2021 (the "Outside Date"); provided that the right to terminate this Agreement under this paragraph shall not be available to any Party whose failure to fulfill or comply with any obligation or covenant under this Agreement or contemplated hereby has been the principal cause of, or resulted in, the failure of the Closing to occur on or prior to such date;

(c) by Buyer, in the event that a (i) Material Adverse Effect shall have occurred prior to Closing or (ii) it determines that Closing condition 6.1(j) or 6.1(k) will not be satisfied prior to Closing;

(d) by Buyer, if a breach of this Agreement by Seller results or would result in any of the conditions set forth in Section 6.1(b) not being satisfied and such breach cannot be cured or, if curable, remains uncured within the earlier of (i) 15 days after Seller has received written notice from Buyer of the occurrence of such breach and (ii) the Outside Date; provided that Buyer may not terminate pursuant to this Section 8.1(d) if Seller's breach has been primarily caused by a breach of any provision of this Agreement by Buyer;

(e) by Seller, if a breach of this Agreement by Buyer results or would result in any of the conditions set forth in Section 6.2(b) not being satisfied and such breach cannot be cured or, if curable, remains uncured within the earlier of (i) 15 days after Buyer has received written notice from Seller of the occurrence of such breach and (ii) the Outside Date; provided that Seller may not terminate pursuant to this Section 8.1(e) if the Buyer's breach has been primarily caused by a breach of any provision of this Agreement by Seller; or

(f) either Buyer or Seller, if any Governmental Authority shall have issued an Order or enacted a Law enjoining or otherwise prohibiting the Closing and such Order or Law shall have become final and nonappealable; provided that the right to terminate this Agreement under this paragraph shall not be available to any Party whose failure to fulfill or comply with any obligation or covenant under this Agreement has been the cause of, or resulted in, the issuance of such nonappealable Order or Law.

8.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 8.1, written notice thereof shall be promptly delivered by the Party seeking termination to the other Parties and such termination shall be immediately effective upon the delivery of such

notice by a Party entitled to effect such termination. Upon any such valid termination, (a) each Party will redeliver to the other Parties all documents, work papers and other materials of the other Parties relating to the transactions contemplated hereby, whether obtained before or after the execution of this Agreement, (b) this Agreement shall become void and no Party shall have any further rights, Liabilities or obligations hereunder except with respect to those obligations set forth in the Confidentiality Agreement and Sections 4.7(a), 8.2 and Article IX hereof, which shall survive any such termination, and (c) termination shall not relieve any Party from liability for Fraud or any intentional or willful breaches of this Agreement prior to the date of such termination. An "intentional or willful breach" means a breach or failure to perform, in each case, that is the consequence of an act or omission by a Party with the actual knowledge that the taking of such act or failure to take such act would, or would reasonably be expected to, cause a Breach of this Agreement.

ARTICLE IX

GENERAL PROVISIONS

9.1 Benefit and Assignment. This Agreement may not be assigned in whole or in part by Parent, Buyer or Seller without the prior written consent of the other Parties, whether by merger, operation of law, or otherwise and any purported assignment without such consent shall be void; provided that Buyer may assign any or all of its rights hereunder to one of more of its Affiliates upon written notice of the same to Seller, which assignment shall not relieve Buyer of any of its obligations hereunder. This Agreement shall be binding upon and inure to the sole benefit of the Parties hereto and their respective successors and permitted assigns and is not intended, nor shall be construed, to give any Person, other than the Parties hereto and their respective successors and permitted assigns, any legal or equitable right, remedy or claim hereunder, and other than the rights of the Indemnified Parties pursuant to Article VII. Notwithstanding the foregoing or anything else to the contrary contained herein, each of ProMerchant LLC, Cape Cod Merchant Services LLC, Michael Gerstein/Jabalah LLC, Drew Sharma/PMSB Holdings LLC, Brett Husak/Eastham Holdings LLC and Kevin Murphy are third-party beneficiaries to Section 1.12 of this Agreement and is entitled to the rights and benefits and may enforce the provisions thereof as if it were a party hereto.

9.2 Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Delaware, and without reference to any rules of construction regarding the Party responsible for the drafting hereof. Each Party (a) agrees that any suit, Action or other legal proceeding arising out of this Agreement shall be brought before any federal or state court located in the State of Delaware having subject matter jurisdiction in the event any dispute arises out of this Agreement, (b) consents to the exclusive jurisdiction of any such court in any such suit, Action or proceeding (c) agrees that service of process or notice in any such suit, Action or proceeding shall be effective if delivered in compliance with Section 9.5 hereof, and (d) waives any objection

which such Party may have to the laying of venue, personal jurisdiction, *forum nonconveniens* and improper service of process (provided such service of process is in accordance with Section 9.5) of any such suit, Action or proceeding in any such court.

9.3 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE AGREEMENTS CONTEMPLATED HEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, TO THE FULLEST EXTENT PERMITTED BY LAW, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION (INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER AGREEMENTS CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND KNOWINGLY WITH ITS, HIS OR HER, AS THE CASE MAY BE, LEGAL COUNSEL, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.3. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

9.4 Expenses. Except as otherwise provided herein, Seller shall be responsible for and shall pay all costs, liabilities and other obligations incurred by it and, up to and including the Closing, the Business in connection with preparing, negotiating and entering into this Agreement and the performance of and compliance with all transactions, agreements and conditions contained in this Agreement to be performed or complied with by it and, up to and including the Closing, the Business, including legal, accounting and financial advisory and investment banking fees incurred by Seller or, up to and including the Closing, the Business, and each of Parent and Buyer shall be responsible for and shall pay all costs, liabilities and other obligations incurred by it in connection with preparing, negotiating and entering into this Agreement and the performance of and compliance with all transactions, agreements and conditions contained in this Agreement to be performed or complied with by it, including its legal, accounting and financial advisory and investment banking fees incurred by Parent or Buyer, and all costs, liabilities and other obligations first incurred by the Business after Closing in connection with the performance of and compliance with all transactions, agreements and conditions contained in this Agreement to be performed or complied with by the Business after Closing. For the avoidance of doubt, any provider of legal, accounting, financial advisory or investment banking services or any other provider of professional

services of Seller or the Business up to and including the Closing Date may continue to provide services to Seller following the Closing solely at Seller's expense. Notwithstanding the above, in the event the Closing doesn't occur as the result of the failure to satisfy the conditions set forth in Section 6.1(j), Section 6.1(j), or Section 6.1(j), Buyer shall be responsible for 50% of Seller's legal fees incurred in connection with the negotiation of this Agreement up to $30,000.

9.5 Notices. Any and all notices, demands, and communications provided for herein or made hereunder shall be given in writing and shall be delivered personally, by overnight delivery service, by facsimile, by email or sent by certified, registered or express air mail, postage prepaid and shall be deemed given to a Party (i) when actually delivered to such Party, if delivered by hand, (ii) one Business Day after deposited with an overnight delivery service, if delivered by overnight delivery, (iii) upon electronic confirmation of receipt, when facsimile transmitted to such Party to the facsimile number indicated for such Party below (or to such other facsimile number for a Party as such Party may have substituted by notice pursuant to this section) during normal business hours, (iv) if sent by email, upon effectiveness of another delivery method hereunder or (v) five days after mailing if mailed to such Party by registered or certified U.S. Mail (return receipt requested) and addressed to such Party at the address designated below for such Party (or to such other address for such Party as such Party may have substituted by notice pursuant to this section):

(a) If to Seller:

Michael P.J. Gerstein, Esq.
In care of: Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210
Email: michael@flowpayments.com; garie@foleyhoag.com
Attn: Gil Arie

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

Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210
Email: garie@foleyhoag.com; erice@foleyhoag.com
Attn: Gil Arie & Erica Rice

(b) If to Parent or Buyer:

Waitr Holdings, Inc.
214 Jefferson St., Suite 200
Lafayette, LA 70501
Email: Thomas.pritchard@waitrapp.com
Attn: Thomas C. Pritchard

Cape Payments, LLC

214 Jefferson St., Suite 200
Lafayette, LA 70501
Email: Thomas.pritchard@waitrapp.com
Attn: Thomas C. Pritchard

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

Goodwin Procter LLP
601 Marshall St.
Redwood City, CA
Email: DJohanson@goodwinlaw.com
Attn: David E. Johanson

9.6 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all Parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, portable document format or other electronic format complying with the U.S federal ESIGN Act of 2000 (such as DocuSign) shall be effective as delivery of a manually executed counterpart to this Agreement.

9.7 Computation of Time. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday, or any date on which banks in New York City, New York are authorized to be closed, the Party having such privilege or duty may exercise such privilege or discharge such duty on the next succeeding day which is a regular Business Day.

9.8 Amendment, Modification and Waiver. This Agreement may not be modified, amended or supplemented except by mutual written agreement of Parent, Buyer and Seller. Any Party may waive in writing any term or condition contained in this Agreement and intended to be for its benefit; provided that no waiver by any Party, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term or condition.

9.9 Entire Agreement. This Agreement, the agreements contemplated hereby, and the appendices, exhibits and schedules delivered herewith, and the Confidentiality Agreement represent the full and complete agreement of the Parties with respect to the subject matter hereof and supersede and replace any prior understandings and agreements among the Parties with respect to the subject matter hereof.

9.10 Publicity. None of the Parties shall and, each Party shall cause its Affiliates not to, make or issue any public announcement or press release to the general public with respect to this Agreement or the transactions contemplated by this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that no such consent or prior notice shall be required in connection with any public announcement or press release the content of which is consistent with that of any prior or

contemporaneous public announcement or press release by any Party in compliance with this Section 9.10. Nothing in this Section 9.10 shall limit any Party from making any announcements, statements or acknowledgments that such Party is required by applicable Law or the requirements of NASDAQ to make, issue or release (including in connection with the exercise of the fiduciary duties of the board of directors of Parent or with NASDAQ in connection with satisfying the condition set forth in Section 6.1(k)); provided, that, to the extent practicable, the Party making such announcement, statement or acknowledgment shall provide such announcement, statement or acknowledgment to the other Parties prior to release and consider in good faith any comments from such other Parties.

9.11 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. If it is ever held by any Governmental Authority of competent jurisdiction that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, such restriction shall be enforced to the maximum extent permitted by Law and, to the extent necessary, the Parties hereto will amend or otherwise modify this Agreement to replace any provision contained herein that is held invalid or unenforceable with a valid and enforceable provision giving effect to the original intent of the Parties.

9.12 Specific Performance. The Parties agree that irreparable damage for which monetary damages, even if available, may not be an adequate remedy, may occur in the event that any Party does not perform its obligations under the provisions of this Agreement (including failing to take such actions as are required of them) or otherwise Breaches this Agreement. The Parties acknowledge and agree that (a) the Parties shall be entitled to an injunction, specific performance, or other equitable relief, to prevent Breaches of this Agreement and to enforce specifically the terms and provisions hereof, without proof of damages, prior to the valid termination of this Agreement in accordance with Section 8.1, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, none of Parent, Buyer or Seller would have entered into this Agreement. Each Party agrees that it shall not oppose the granting of specific performance and other equitable relief on the basis that the other Parties have an adequate remedy at Law or that an award of specific performance is not an appropriate remedy for any reason at Law or equity. The Parties acknowledge and agree that any Party seeking an injunction to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section shall not be required to provide any bond or other security in connection with any such injunction.

9.13 Interpretation.

(a) References to “dollars” or “$” are to U.S. dollars.

(b) This Agreement was prepared jointly by the Parties hereto and no rule that it be construed against the drafter will have any application in its construction or interpretation.

(c) Whenever the words “ordinary course of business” are used in this Agreement, they shall be deemed to be followed by the words “consistent with past practice.”

(d) Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, "herein," "hereto," "hereof," "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof; (ii) the word "including" means "including, but not limited to"; (iii) masculine gender shall also include the feminine and neutral genders, and vice versa; (iv) words importing the singular shall also include the plural, and vice versa; (v) the word "or" is disjunctive but not necessarily exclusive; and (vi) accounting terms which are not otherwise defined in this Agreement shall have the meanings given to them under the Accounting Principles.

(e) Unless the context of this Agreement otherwise requires, references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(f) Whenever reference is made to a "partner" or "member" that is an entity, each such term shall be deemed to include the ultimate holders of such entity.

(g) The word "day" means calendar day unless Business Day is expressly specified.

9.14 Headings. The headings contained in this Agreement are inserted for convenience only and shall not be considered in interpreting or construing any of the provisions contained in this Agreement.

9.15 Owner Guarantee. To induce Buyer to enter into this Agreement, each Owner hereby absolutely, unconditionally and irrevocably guarantees to Buyer the due, complete and punctual payment observance, performance and discharge of the payment obligations of Seller pursuant to this Agreement, including under Article VII (the "Obligations"). Buyer may, in its sole discretion, bring and prosecute a separate Action against the Owners for the full amount of the Obligations, regardless of whether any Action is brought against Seller, or whether Seller is joined in any such action. Buyer shall not be obligated to file any Action in relation to the Obligations in the event that Seller becomes subject to an insolvency, bankruptcy, reorganization or similar proceeding, and the failure of Buyer to so file shall not affect the Owners' obligations hereunder. In the event that any payment in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, the Owners shall remain liable hereunder with respect to the Obligations as if such payment had not been made. This Section 9.15 is an unconditional guarantee of payment and not of collection. Each Owner agrees that Buyer may at any time and from time to time, without notice to or further consent of any Owner, extend the time of payment of any Obligation, and may also enter into any agreement with Seller or any other Person interested in the transactions contemplated by this Agreement for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, without in any way impairing or affecting the Owners' obligations under this Section 9.15. Each Owner agrees that the Obligations hereunder shall not be released or discharged, in whole or in part, or otherwise affected by: (i) the failure or delay of Buyer to assert any claim or demand or to enforce any right or remedy against the Owners or Seller or any other Person interested in the transactions contemplated by this Agreement; (ii) any change in the time, place or manner of payment of the Obligations; (iii) the addition, substitution or release of any Person now or hereafter liable with

respect to the Obligations, to or from this Section 9.15, this Agreement, or any related agreement or document; (iv) any change in the corporate existence, structure or ownership of Seller or any other Person now or hereafter interested in the transactions contemplated by this Agreement; (v) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Seller or any other Person now or hereafter interested in the transactions contemplated by this Agreement; (vi) the existence of any claim, set-off or other right which Seller or any Owner may have at any time against Buyer, whether in connection with any Obligation or otherwise; or (vii) the adequacy of any other means Buyer may have of obtaining payment of the Obligations. Notwithstanding anything to the contrary contained in this Section 9.15, the parties hereto hereby agree that, to the extent Seller is relieved of any of its obligations under this Agreement, the Owners shall be similarly relieved of its corresponding Obligations under this Section 9.15 solely in respect of such relieved obligations. The obligations of the Owners under this Section 9.15 shall be several, and not joint and several, in accordance with each Owner's Pro-Rata Share.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date set forth in the first paragraph hereof.

SELLER:
Flow Payments LLC

By: /s/ Michael Gerstein, Manager

By: /s/ Drew Sharma, Manager

OWNERS:

_____
Eastham Holdings LLC

By: /s/ Brett Husak, Managing Partner

ProMerchant LLC

By: /s/ Michael Gerstein, Manager

By: /s/ Drew Sharma, Manager

PARENT:
Waitr Holdings, Inc.

By: /s/ Leo Bogdanov
Name: Leo Bogdanov
Title: Chief Financial Officer

BUYER:
Cape Payments, LLC

By: /s/ Leo Bogdanov
Name: Leo Bogdanov
Title: Chief Financial Officer

[*Signature Page of Asset Purchase Agreement*]

DEFINITIONS

The following terms, as used in this Agreement, shall have the following meanings:

"Accounting Principles" means the accounting principles, practices and methodologies set forth in Exhibit A.

"Acquired Agreements" has the meaning set forth in Section 1.1(a).

"Acquired IP" has the meaning set forth in Section 1.1(b).

"Acquired Leases" has the meaning set forth in Section 1.1(c).

"Acquired Seller Assets" has the meaning set forth in Section 1.1(d).

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, audit, notice of violation, proceeding, Litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"Active Agreement" means any Contract wherein Seller, or any member of the Company Group, has received any compensation related to such agreement, or paid any compensation related to such agreement, within the six (6) month period immediately preceding the Closing Date.

"Adjustment Holdback Amount" means $220,000.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Affiliate Contract" has the meaning set forth in Section 2.17.

"Aggregate Consideration" has the meaning set forth in Section 1.14.

"Agreement" has the meaning set forth in the Preamble.

"Ancillary Agreements" means, collectively, (i) the Bills of Sale, (ii) the Assignment and Assumption Agreements, (iii) the Escrow Agreement, and (iv) the Indemnity Holdback Share Pledge.

"Anti-Bribery Laws" has the meaning set forth in Section 2.18(a).

"Anti-Money Laundering Laws" means laws, regulations, rules or guidelines relating to money laundering, including, without limitation, financial recordkeeping, reporting requirements and anti-money laundering program requirements, which apply to the Business, such as, without

limitation, the Bank Secrecy Act of 1970, as amended, and the implementing regulations of the U.S. Treasury Department's Financial Crimes Enforcement Network, the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, the U.S. Currency and Foreign Transaction Reporting Act of 1970, as amended, the U.S. Money Laundering Control Act of 1986, as amended, the Annunzio-Wylie Anti-Money Laundering Act of 1992, as amended and all money laundering-related laws of other jurisdictions where Seller or any of its Subsidiaries conduct business or own assets, and any related or similar law issued, administered or enforced by any Governmental Authority.

"Apportioned Obligations" has the meaning set forth in Section 4.11.

"Assets" has the meaning set forth in Section 1.1.

"Assignment and Assumption Agreements" means, collectively, the Agreements Assignment and Assumption Agreement, the IP Assignment and Assumption Agreement, the Lease Assignment and Assumption Agreement, and the Other Assumed Liabilities Assignment and Assumption Agreement.

"Assumed Liabilities" has the meaning set forth in Section 1.3.

"Base Cash Consideration" has the meaning set forth in Section 1.6(a).

"Benefit Plan" means all material "employee benefit plans," as defined in Section 3(3) of ERISA, whether or not subject to ERISA (collectively, "Benefit Plans"), including each Contract, plan, program, practice, arrangement, collective bargaining agreement, or other arrangement (whether written or unwritten) providing for severance, salary continuation, equity or equity-based compensation, profits interest, stock options or stock-purchase, bonus, profit-sharing, incentive or deferred compensation, retention, change in control, vacation or other paid-time-off, disability, health or welfare benefits, sick pay, perquisite or fringe benefits, employment or consulting, pension, retirement or supplemental retirement benefits or other compensation or employee benefits or remuneration of any kind., in each case, which the Company Group or any ERISA Affiliate sponsors, maintains or contributes to, or provides benefits under or for which any potential Liability or obligation is borne, by a member of the Company Group or any ERISA Affiliate and which covers or provides benefits under or through such plan, program or arrangement to any Business Employee or former employee of the Business (or their eligible dependents), (collectively, the "Company Benefit Plans").

"Bills of Sale" has the meaning set forth in Section 1.10(a)(i).

"Books and Records" means the books, records, manuals and other materials (in any form), including financial and accounting records, records maintained at the headquarters of the Business, advertising, catalogues, sales and promotional materials, price lists, correspondence, customer, mailing and distribution lists, referral sources, photographs, production data, purchasing materials and records, personnel records, research and development files, records, data and laboratory books,

service and warranty records, equipment logs, operating guides and manuals, sales order files and litigation files.

"Breach" means any breach of, default (or an event which, with notice or lapse of time or both, would constitute a default) under or failure to perform or comply with, any covenant, provision, term or other obligation or right.

"Business" means payment processing operations pre-Closing.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized by Law to close.

"Business Employee" means each employee of Seller or any of its Affiliates who wholly or primarily provides services to the Business and whose name is set forth on Schedule 2.14(a), as it may be updated from time to time in accordance with this Agreement.

"Business Registered Intellectual Property" has the meaning set forth in Section 2.9(a).

"Buyer" has the meaning set forth in the Preamble.

"Buyer Indemnified Parties" has the meaning set forth in Section 7.2.

"Calculation Time" means 11:59 p.m. on the day prior to the Closing Date.

"Cap" has the meaning set forth in Section 7.4(b).

"Cash" means the sum of the fair market value (expressed in United States dollars) of all cash and cash equivalents of any kind (including without limitation marketable securities and short term investments), excluding restricted cash, determined in accordance with the Accounting Principles. Cash shall be calculated net of issued but uncleared checks and drafts and include checks and drafts deposited for the account of Seller, including deposits in transit.

"Cash Consideration" has the meaning set forth in Section 1.6(a).

"Claim Notice" has the meaning set forth in Section 7.5.

"Closing" has the meaning set forth in Section 1.8.

"Closing Balance Sheet" means the unaudited consolidated balance sheet of the Business as of the Calculation Time, reflecting the Assets and the Assumed Liabilities, prepared in accordance with the Business's past accounting practices and the Accounting Principles.

"Closing Cash" means the aggregate amount of Cash held by Seller and any other member of the Company Group or otherwise included in the Assets.

"Closing Cash Payment" shall have the meaning set forth in Section 1.7(a).

"Closing Date" has the meaning set forth in Section 1.8.

"Closing VWAP" means the average VWAP of Parent Stock (rounded to the nearest one-hundredth of one cent) for the five (5) consecutive trading days ending the day prior to the Closing Date.

"Closing Working Capital" means (i) current assets included in the Assets minus (ii) current liabilities included in the Assumed Liabilities, each as of the Calculation Time, as calculated and defined in accordance with the Accounting Principles and the illustrative calculation of Closing Working Capital set forth in Exhibit B.

"Closing Working Capital Deficiency Amount" means, if the Closing Working Capital is less than the Target Closing Working Capital, (i) the Target Closing Working Capital minus (ii) the Closing Working Capital.

"Closing Working Capital Excess Amount" means, if the Closing Working Capital is greater than the Target Closing Working Capital, (i) the Closing Working Capital minus (ii) the Target Closing Working Capital.

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

"Company Data" has the meaning set forth in Section 2.9(i).

"Company Group" means Seller and its Subsidiaries (if any), collectively.

"Company IT Systems" means all information technology and computer systems (including computer software, information technology and telecommunication hardware and other hardware and equipment) used for or relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information whether or not in electronic format, that are owned, leased or licensed by the Company Group or provided as a service to the Company Group and used in the Business in each case to the extent controlled by the Company Group, including all of the foregoing that are used by the Company to make Intellectual Property Assets available to customers.

"Competitive Activity" means, either individually or in partnership, jointly or in conjunction with any other Person, firm, association, syndicate, trust, franchise, company or corporation, whether as owner, partner, officer, director, investor, shareholder, beneficiary, franchisee, licensee, employee, consultant, agent, lender or in any manner whatsoever, engaging in, carrying on or be otherwise concerned with, employed by, associated with, or have any interest in, managing, advising, lending money to, guaranteeing the debts or obligations of, rendering services or advice to, in whole or in part, any Person that conducts a business that is competitive with the Business as currently conducted; provided, however a Competitive Activity shall not preclude any Person from participating as a stockholder, member, or investor in a business entity through the ownership of not more than a five percent (5%) passive interest in a public or private company.

"Confidentiality Agreement" means that certain Confidentiality Agreement by and between Waitr Holdings Inc. and Flow Payments LLC, Cape Cod Merchant Services LLC, and ProMerchant LLC, dated as of January 19, 2021, as amended.

"Contaminants" has the meaning set forth in Section 2.9(k).

"Contracts" means, with respect to any Person, any written or oral contracts, agreements, leases, indentures, insurance policies, commitments, settlements, or other obligations, including all amendments and modifications thereto, to which such Person is a party or by which such Person is bound or to which any of such Person's assets or properties is subject.

"Creditor's Rights Exception" has the meaning set forth in Schedule 2.2(a).

"Deductible" has the meaning set forth in Section 7.4(a).

"Dispute Notice" has the meaning set forth in Section 7.5(b).

"Earnout Amount" means an amount in cash equal to the multiple of (i) (A) 2022 Net Revenue less (B) 2021 Net Revenue and (ii) two. For the avoidance of doubt, if 2022 Net Revenue is less than 2021 Net Revenue, there shall be no Earnout Amount paid by Buyer pursuant to Section 1.12. For illustrative purposes only as an example of the calculation, if 2021 Net Revenue = $7.0m x 1.25 = $8.75m, any 2022 Net Revenue over the $8.75m gets paid out 2x; if 2022 Net Revenue = $20.0m then $20.0m-$8.75m = $11.25m x 2 = $22.5m.

"Employees" means current or former employees employed (or formerly employed) in the operation of the Business.

"Encumbrances" means, any encumbrance, charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, deed of trust, hypothecation, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, conditional sale or restriction on transfer of title, including any restriction on use, voting (in the case of any security or equity interest), receipt of income or exercise of any other attribute of ownership, whether imposed by agreement, Law, equity or otherwise.

"Environmental Law" means any law, code, license, permit, authorization, approval, consent, common law, legal doctrine, requirement or agreement with any Governmental Authority relating to (i) the protection, preservation or restoration of the environment (including air, water, vapor, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, or (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of hazardous substances.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended

"ERISA Affiliate" means all Persons (whether or not incorporated) that are or would have ever been treated with Seller as a "single employer" within the meaning of Section 4001(b) of ERISA or Section 414 of the Code.

"Escrow Agent" means Bank of America, or such other similar financial institution agreed to by the Buyer and the Seller.

"Escrow Agreement" means the escrow agreement to be entered into at Closing with the Escrow Agent in a form mutually agreed by and among Buyer, Seller and the Escrow Agent.

"Estimated Cash Consideration" has the meaning set forth in Section 1.9(a).

"Estimated Closing Balance Sheet" has the meaning set forth in Section 1.9(a).

"Estimated Closing Cash" has the meaning set forth in Section 1.9(a).

"Estimated Closing Statement" has the meaning set forth in Section 1.9(a).

"Estimated Closing Working Capital" has the meaning set forth in Section 1.9(a).

"Estimated Closing Working Capital Deficiency Amount" has the meaning set forth in Section 1.9(a).

"Estimated Working Capital Excess Amount" has the meaning set forth in Section 1.9(a).

"Estimated Working Capital Deficiency Amount" has the meaning set forth in Section 1.9(a).

"Estimated Working Capital Excess Amount" has the meaning set forth in Section 1.9(a).

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

"Excluded Assets" has the meaning set forth in Section 1.2.

"Excluded Liabilities" has the meaning set forth in Section 1.4.

"Federal Securities Laws" means the Exchange Act, the Securities Act and the rules and regulations promulgated thereunder

"Final Closing Statement" has the meaning set forth in Section 1.9(b).

"Financial Statements" means (i) the unaudited consolidated financial statements (including balance sheets and income statements) of the Seller for the fiscal year ended December 31, 2020, and (ii) the unaudited consolidated financial statements (including balance sheets and income statements) of the Seller for the six-month period ended June 30, 2021.

"Fraud" with respect to any Person shall mean actual and intentional common law fraud.

"Fundamental Representations" means the representations and warranties of Seller set forth in Section 2.1 (Organization and Qualification), Section 2.2 (Contemplated Transactions General Compliance), Section 2.8(a) (Title to Assets, etc.), Section 2.15 (Taxes), and Section 2.19 (Brokers' Fees).

"GAAP" means United States generally accepted accounting principles, as in effect at the date of preparation of any relevant statement, document or analysis.

"Governmental Authority" means the government of the United States or any foreign jurisdiction, any state, county, municipality or other governmental or quasi-governmental unit, or any agency, board, bureau, instrumentality, department or commission (including any court or other tribunal) of any of the foregoing, any arbitrator or arbitral body or any self-regulatory authority with similar powers.

"Governmental Filings" has the meaning set forth in Section 2.2(d).

"Holdback Release Date" means the date that is twelve (12) months from the Closing Date.

"Inbound Licenses" has the meaning set forth in Section 2.9(c).

"Indebtedness" means, without duplication and with respect to any member of the Company Group, all (a) indebtedness for borrowed money, including drawings under lines of credit, provided by any member, officer, employee or Third Party, (b) obligations for the deferred purchase price of property or services, including earnout and contingent payments, (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments, (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement, (e) capital lease obligations, (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions, (g) all defined benefit pension, multiemployer pension, post-retirement health and welfare benefit, accrued annual or other bonus obligations, any unpaid severance liabilities currently being paid or payable in respect of employees and service providers of the Company or any of its Subsidiaries who terminated employment or whose services to the Company or any of its Subsidiaries have ceased (as applicable) prior to the Closing and deferred compensation liabilities of the Company or any of its Subsidiaries, together, in each case, with any associated employer payroll taxes (h) guarantees made by a member of the Company Group on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (g), and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (h).

"Indemnification Amount" has the meaning set forth in Section 7.5(b).

"Indemnified Party" has the meaning set forth in Section 7.4.

"Indemnifying Party" has the meaning set forth in Section 7.4.

"Indemnity Escrow Holdback Amount" means the amount that is eighty percent (80%) of the Indemnity Holdback Amount.

"Indemnity Holdback Amount" means $950,100.

"Indemnity Holdback Restriction" has the meaning set forth in Section 1.9(c)(iii).

"Indemnity Holdback Shares" means the number of shares of Parent Stock determined by dividing (x) twenty percent (20%) of the Indemnity Holdback Amount by (y) the Closing VWAP.

"Indemnity Holdback Share Pledge" has the meaning set forth in Section 1.9(c)(iii).

"Independent Accounting Firm" has the meaning set forth in Section 1.11.

"Insurance Policies" has the meaning set forth in Section 2.16(a).

"Intellectual Property Assets" means all Intellectual Property relating to or used in connection with the Business' operations (including rights and remedies in respect of past, present and future infringements thereof) that is either (a) owned by Seller or a member of the Company Group or (b) used by Seller or a member of the Company Group in operating the Business.

"Intellectual Property" means all intellectual property rights arising anywhere in the world in or under: registered and unregistered trademarks and applications for registration of same, service marks, trade names, logos, slogans, trade dress, URLs, domain names and other indicators of source (and all goodwill associated with any of the foregoing); copyrights, copyright registrations and applications for copyright registration, including any copyrights arising in computer software or corollary database rights, and mask work rights; patents, patent applications (including reissues, divisions, continuations, continuations in part and extensions); inventions, invention disclosures, trade secrets, formulae, processes, methodologies, know-how and any other intellectual property or proprietary rights.

"IP Assignment and Assumption Agreements" has the meaning set forth in Section 1.10.

"IT Infrastructure" has the meaning set forth in Section 2.9(h).

"Key Employees" means each of the employees listed on Schedule 1-E hereto.

"Knowledge" means, (a) when applied to Buyer, the actual knowledge of Carl Grimstad, Thomas Pritchard or Leo Bogdanov, and (b) when applied to Seller, the actual knowledge of Michael Gerstein, Drew Sharma, Kevin Murphy, Brett Husak.

"Latest Balance Sheet" means the unaudited consolidated balance sheet of Seller as of June 30, 2021.

"Latest Balance Sheet Date" means June 30, 2021.

"Laws" means, collectively, all federal, state, local, municipal, foreign or international (including multi-national) constitutions, laws, statutes, ordinances, rules, regulations, codes, order, treaties or principles of common law, judgment or decree or other pronouncement of any Governmental Authority.

"Lease" has the meaning set forth in Section 2.8(c).

"Lease Assignment and Assumption Agreement" has the meaning set forth in Section 1.10.

"Leased Property" has the meaning set forth in Section 2.8(c).

"Liabilities" or, individually, "Liability" means, with respect to any Person, any debt liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested executory, determined, and whether or not the same is required to be accrued on the financial statements of such Person.

"Litigation" means any claim, action, arbitration, audit, hearing, investigation, litigation, appeal, suit, or other proceeding (whether civil, criminal, administrative, judicial, or investigative, whether formal or informal, whether public or private) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"Losses" means all losses, claims, damages, settlements, judgments, awards, fines, fees (including reasonable attorneys' fees), charges, liabilities, penalties, Taxes and costs and expenses (including reasonable costs of investigation, remediation or other response actions) of any nature.

"Market Value" means, as of any date, the VWAP for the five consecutive trading days ending on the trading day immediately prior to such date.

"Material Adverse Effect" means any effect, change, event, result, occurrence, state of facts, circumstance or development that, individually or in the aggregate has had or could reasonably be expected to have a material adverse effect on the Business, Assets, Assumed Liabilities, operations or results of operations of the Business or condition (financial or otherwise) of the Business taken as a whole; provided that none of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect under this definition: any adverse change, event, development or effect arising from or relating to (i) general business, political or economic conditions affecting the industry in which the Business operates, (ii) acts of war, sabotage, military actions armed hostilities or terrorism, (iii) changes in financial, banking or securities markets, (iv) any changes in Laws or GAAP or the enforcement or interpretation thereof, (v) any change relating to the identity of, or facts and circumstances relating to, Buyer and including any actions by customers, suppliers or personnel, (vi) any action taken by Buyer and any of its Affiliates, agents or representatives expressly required by this Agreement, (vii) act of God including any pandemic, hurricane, flood, tornado, earthquake or other natural disaster or any other force majeure event, (viii) any failure to meet internal or published projections, estimates or forecasts of revenues, earnings, or other measures of financial or operating performance for any period (provided that the underlying causes of such failures shall not be excluded) or (ix) the taking of any action required to be taken by this Agreement, except in the case of the foregoing clauses (i) through (iv) to the extent such change, event, development or effect has a disproportionate adverse impact on the Business in a disproportionately adverse manner relative to other companies in the industries and markets in which the Business operates.

"Material Contracts" has the meaning set forth in Section 2.7(a).

"NASDAQ" means The Nasdaq Stock Market LLC.

"NASDAQ Approval" means that NASDAQ has confirmed or acknowledged to the sole satisfaction of Buyer, that the closing of this Agreement and the Other Asset Purchase Agreements will not violate or conflict with the continued listing requirements or corporate governance policies of NASDAQ to maintain the listing of Parent common stock or otherwise jeopardize the continued listing of the Parent common stock.

"Non-Indemnity Holdback Shares" means the Shares other than the Indemnity Holdback Shares.

"Objection Notice" has the meaning set forth in Section 1.9(b).

"Open Source Software" means any software (in source or object code form) that is subject to (i) a license or other agreement commonly referred to as an open source, free software, copyleft or community source code license (including but not limited to any code or library licensed under the GNU Affero General Public License, GNU General Public License, GNU Lesser General Public License, BSD License, Apache Software License, or any other public source code license arrangement) or (ii) any other license or other agreement that requires, as a condition of the use, modification or distribution of software subject to such license or agreement, that such software or other software linked with, called by, combined or distributed with such software be (a) disclosed, distributed, made available, offered, licensed or delivered in source code form, (b) licensed for the purpose of making derivative works, or (c) redistributable at no charge, including without limitation any license defined as an open source license by the Open Source Initiative as set forth on www.opensource.org.

"Order(s)" means all decisions, injunctions, writs, guidelines, orders, arbitrations, awards, judgments, subpoenas, verdicts or decrees entered, issued, made or rendered by any Governmental Authority.

"Other Asset Purchase Agreements" means the asset purchase agreements with respect to ProMerchant LLC and Cape Cod Merchant Services LLC.

"Other Assumed Liabilities Assignment and Assumption Agreement" has the meaning set forth in Section 1.10.

"Outbound Licenses" has the meaning set forth in Section 2.9(c).

"Outside Date" has the meaning set forth in Section 8.1(b).

"Owner" means each of Eastham Holdings LLC and ProMerchant LLC.

"Parent" has the meaning set forth in the Preamble.

"Parent Stock" has the meaning set forth in Section 1.6(b).

"Party" and "Parties" have the meaning set forth in the Preamble.

"Payoff Amount" has the meaning set forth in Section 1.7(b).

"Payoff Letters" has the meaning set forth in Section 4.4.

"Permits" means, collectively, governmental, regulatory and administrative permits, approvals, certifications, authorizations, licenses, franchises, orders, registrations, and accreditations.

"Permitted Encumbrances" means (a) Encumbrances for Taxes not yet due and payable, (b) mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business, (c) Encumbrances arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the Business, or (d) non-exclusive licenses granted in the ordinary course of business.

"Person" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Personal Information" means all information concerning an identified or identifiable natural person.

"Post-Closing Tax Period" has the meaning set forth in Section 4.11.

"Pre-Closing Tax Period" has the meaning set forth in Section 4.11.

"Privacy Commitments" has the meaning set forth in Section 2.9(i).

"Pro-Rata Share" means 30% with respect to Eastham Holdings LLC, 70% with respect to ProMerchant LLC.

"Purchase Price" has the meaning set forth in Section 1.6.

"Sale Event" has the meaning set forth in Section 1.12(f).

"Schedules" means the disclosure schedules delivered by (i) Seller to Buyer no later than five (5) Business Days after the date hereof setting forth any and all exceptions or supplemental information to the representations and warranties contained in Article II and containing certain other disclosure as referenced throughout this Agreement and (ii) Buyer to Seller on the date hereof setting forth any and all exceptions or supplemental information to the representations and warranties contained in Article III and containing certain other disclosure as referenced throughout this Agreement.

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

"SEC Reports" has the meaning set forth in Section 3.7.

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

"Seller" has the meaning set forth in the Preamble.

"Seller Indemnified Parties" has the meaning set forth in Section 7.3.

"Seller Member Approval" means the consent of all of the holders of the membership interests of the Seller under the Seller Operating Agreement to approve and adopt, as the case may be, this Agreement, the Ancillary Agreements and the other transactions contemplated hereby, in each case, in accordance with the Seller Operating Agreement, and which shall include a waiver in accordance with applicable Law by such holders of any appraisal, dissenters' or similar rights that may be available to such holders in connection with this Agreement, the Ancillary Agreement and/or the other transactions contemplated hereby.

"Seller Operating Agreement" means Seller's Operating Agreement as in effect at the time of Closing.

"Shares" shall have the meaning set forth in Section 1.6(b).

"Standalone Plan" means any Benefit Plan that is sponsored, maintained or contributed to or required to be contributed to solely by one or more of the members of the Company Group and in which solely Business Employees are participants.

"Subsidiaries" means each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing at least 50% of the outstanding voting stock or other equity interests.

"Target Closing Working Capital" means $220,000.

"Tax" means any income, gross receipts, license, payroll, employment, franchise, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, duties, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax of any kind whatsoever (and any interest, penalty, addition or additional amount thereon) imposed, assessed or collected by or under the authority of any Governmental Authority and any liability for the payment of any of the foregoing as a successor, transferee or otherwise.

"Tax Return" means any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority (including any supplement or attachment thereto and any amendment thereof) in connection with the determination, assessment, collection or payment of any Tax or in connection with the

administration, implementation or enforcement of or compliance with any Laws relating to any Tax.

"Territory" has the meaning set forth in Section 4.8(a).

"Third Party" means a Person that is not a party to this Agreement.

"Third Party Claim" has the meaning set forth in Section 7.6(a).

"Third Party Claim Notice" has the meaning set forth in Section 7.6(a).

"Transaction Expenses" means any investment banking, accounting, attorney, other professional fees or other expenses incurred by Seller or any other member of the Company Group in connection with the negotiation, preparation, execution, delivery and consummation of this Agreement or any other agreement contemplated hereby and the transactions contemplated hereby and thereby.

"Transfer Taxes" means any sales, use, stock transfer, real property transfer, real property gains, transfer, stamp, registration, documentary, recording or similar duties or Taxes (together with any interest thereon, penalties, fines, costs, fees, additions to Tax or additional amounts with respect thereto) incurred in connection with the transactions contemplated by this Agreement.

"Transferred Employee" has the meaning set forth in Section 5.1(a).

"2021 Net Revenue" shall mean the product of (i) the consolidated net revenue of Buyer, Flow Payments, LLC, Cape Cod Merchant Services LLC, and ProMerchant LLC for calendar year 2021, calculated on an accrual basis in accordance with GAAP, but excluding intra-company transfers and (ii) 1.25; provided, however, that for purposes of calculating (i) above, in the event Buyer post-Closing renegotiates any of the Contract pricing (including pricing set forth in schedule A, residual schedule) and assumes Liability in connection therewith, the calculation of consolidated net revenue of Buyer will not include any increased revenues resulting from any and all improved Contract pricing.

"2021 Net Revenue Statement" shall have the definition set forth in Section 1.12(b).

"2022 Net Revenue" shall mean the net revenue of Buyer for calendar year 2022, calculated on an accrual basis in accordance with GAAP; provided, however, that for purposes of calculating net revenue, in the event Buyer post-Closing renegotiates any of the Contract pricing (including pricing set forth in schedule A, residual schedule) and assumes Liability in connection therewith, the calculation of net revenue of Buyer will not include any increased revenues resulting from any and all improved Contract pricing.

"2022 Net Revenue Statement" shall have the definition set forth in Section 1.12(c).

"Unresolved Claims" has the meaning set forth in Section 7.6(c).

"VWAP" means, for any trading day, the volume weighted average price per share of Parent Stock on the NASDAQ (as reported by Bloomberg L.P. or, its successor, or, if not available, by another authoritative source mutually agreed by Buyer and Seller) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day.

"WARN Act" means the U.S. Worker Adjustment and Retraining Notification Act, and any other similar applicable Law.

Exhibit 10.3

ASSET PURCHASE AGREEMENT

DATED AS OF AUGUST 9, 2021

BY AND AMONG

WAITR HOLDINGS, INC.,

CAPE PAYMENTS, LLC,

PROMERCHANT LLC,

JABALAH, LLC

AND

PMSB HOLDINGS, LLC

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of August 9, 2021, by and among Waitr Holdings Inc., a Delaware corporation ("Parent"), Cape Payments, LLC, a Delaware limited liability company ("Buyer"), ProMerchant LLC ("Seller"), and solely for purposes of Section 4.8 and Section 9.15, each of the undersigned Owners. Parent, Buyer and Seller are sometimes referred to collectively as the "Parties" and individually as a "Party." Except as otherwise set forth herein, capitalized terms used but not defined herein shall have the meaning specified in Appendix A.

RECITALS

A. The Company Group is engaged in the Business.

B. Buyer wishes to purchase from Seller, and Seller wishes to sell, assign and transfer to Buyer, certain assets and properties of Seller, upon the terms and subject to the conditions set forth herein.

C. Buyer has agreed to assume certain liabilities of Seller, upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, based upon the above premises and in consideration of the mutual representations, warranties, covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I

PURCHASE AND SALE

1.1 Purchase of Assets. Subject to the terms and conditions hereof, at the Closing Seller will (or will cause another member of the Company Group to) sell, transfer, assign and deliver to Buyer (or an Affiliate of Buyer nominated by Buyer), and Buyer (or such Affiliate of Buyer) will purchase from Seller (or such other member of the Company Group), all right, title and interest of Seller (or such other member of the Company Group) in the following assets :

(a) the Agreements set forth in Schedule 1-A, including rights to receive payment, goods or services and to assert claims and take other actions thereunder, of any and all Active Agreements (the "Acquired Agreements");

(b) the Intellectual Property Assets, including the Intellectual Property set forth in Schedule 1-B (collectively, the "Acquired IP");

(c) the Leases set forth in Schedule 1-C (the "Acquired Leases"); and

(d) all other properties, assets and rights of every nature, whether real, personal, tangible, intangible or otherwise and whether now existing or hereinafter acquired, owned (directly or indirectly) by the Company Group and relating to or used or held for use in connection with the Business except for the Excluded Assets (the "Acquired Seller Assets" and, together with the Acquired Agreements, the Acquired IP, and the Acquired Leases, the "Assets").

Subject to the terms and conditions hereof, at Closing, the Assets shall be transferred to Buyer free and clear of all liabilities, obligations, liens and Encumbrances excepting only Assumed Liabilities and Permitted Encumbrances.

1.2 Excluded Assets. Notwithstanding anything to the contrary in Section 1.1 or elsewhere in the Agreement, Seller will retain and not sell transfer, assign or deliver, and Buyer will not purchase or acquire, the assets set forth in Schedule 1-D (the "Excluded Assets").

1.3 Assumption of Liabilities. Subject to the terms and conditions hereof, at the Closing Buyer shall assume and agree to pay, perform, assume and discharge when due the following liabilities existing at or arising on or after the Closing Date (collectively, the "Assumed Liabilities"):

(a) all liabilities relating to the Assets, including trade and other accounts payable as set forth in the Estimated Closing Statement, that have been incurred in the ordinary course of business and are reflected on the Estimated Closing Balance Sheet included in the Estimated Closing Statement;

(b) all Taxes imposed with respect to, arising out of, or relating to the operation of the Business or the ownership of the Assets on or following the Closing Date;

(c) all Liabilities arising after the Closing in respect of the Contracts and Governmental Approvals included in the Assets (other than Liabilities attributable to any failure by the Company Group to comply with the terms thereof prior to the Closing), including, for the avoidance of doubt, Seller's duties to pay residual compensation to Seller's agents and affiliates (to the extent such duties arise under such Contracts and are not the result of a breach or failure to perform by the Company Group); and

(d) all Liabilities in respect of Transferred Employees arising after the Closing, other than any Liabilities retained by Seller or its Subsidiaries pursuant to Section 5.1.

1.4 Excluded Liabilities. Except as set forth in Section 1.3 or any other provision hereof, Buyer shall not assume any Liabilities of any kind whatsoever (including Taxes of Seller or any Subsidiary of Seller, except as provided in Section 4.10 (Transfer Taxes) and Section 4.11 (Apportioned Obligations) hereof) relating to or arising out of the operation of the Business or the ownership of the Assets on or prior to the Closing other than the Assumed Liabilities (the "Excluded Liabilities"), including, without limitation, (a) any Liabilities in respect of Transaction Expenses, or (b) any Liabilities in respect of Indebtedness.

1.5 Consent of Third Parties. Notwithstanding anything to the contrary herein, this Agreement shall not constitute an agreement to assign or transfer any interest in any Permit or Contract or any claim or right arising thereunder if such assignment or transfer without the consent or approval of a Third Party would constitute a Breach thereof or affect adversely the rights of Buyer thereunder, and any such transfer or assignment shall be made subject to such consent or approval being obtained. In the event any such consent or approval is not obtained prior to Closing the Closing shall occur without any adjustment to the Purchase Price and Seller shall use commercially reasonable efforts to obtain any such consent or approval after the Closing, and Seller will cooperate with Buyer in any lawful and economically feasible arrangement to provide that Buyer shall receive the interest of Seller in the benefits under any such Permit or Contract (in which case, for avoidance of doubt, the associated Taxes shall be Assumed Liabilities), including performance by Seller as agent, provided that Buyer shall undertake to pay or satisfy the corresponding liabilities for the enjoyment of such benefit to the extent Buyer would have been responsible therefor if such consent or approval had been obtained. Seller shall bear all reasonable costs of seeking any such consent or approval. Nothing in this Section 1.5 shall be deemed a waiver by Buyer of its right to receive prior to Closing an effective assignment of all of the Assets nor shall this Section 1.5 be deemed to constitute an agreement to exclude from the Assets any assets described under Section 1.1.

1.6 Purchase Price. The aggregate purchase price payable to Seller for the Assets shall equal (i) Two Million Four Hundred Ninety Nine Thousand dollars ($2,499,000), subject to adjustment as set forth herein (such aggregate amount, the "Closing Purchase Price"), plus (ii) 16.66% of the Earnout Amount (as defined in, and to be paid pursuant to the percentages set forth in Section 1.12(d) of, that certain Asset Purchase Agreement among Parent, Buyer, Flow Payments LLC and the other parties thereto dated as of the date hereof) (if any) (together with the Closing Purchase Price, the "Purchase Price"). The Closing Purchase Price shall consist of the following:

(a) An amount in cash (the "Cash Consideration") equal to One Million Nine Hundred Ninety Nine Thousand and Two Hundred dollars ($1,999,200) (the "Base Cash Consideration"), plus Closing Cash, plus the Closing Working Capital Excess Amount (if any), less the Closing Working Capital Deficiency Amount (if any), payable at the times and in the manner set forth in Section 1.7; and

(b) A number of shares of common stock of Parent (the "Parent Stock") equal to Four Hundred Ninety Nine Thousand and Eight Hundred dollars ($499,800) divided by the Closing VWAP (the "Shares"), payable at the times and in the manner set forth in Section 1.7.

1.7 Closing Date Payment and Issuance. At the Closing:

(a) Buyer shall pay to Seller an amount equal to (x) the Estimated Cash Consideration, less (x) the Payoff Amount, less (y) the Adjustment Holdback Amount less (z) the Indemnity Escrow Holdback Amount (such amount, the "Closing Cash Payment"), in cash, by wire transfer of immediately available funds to the account designated in writing by Seller;

(b) Buyer shall pay, or cause to be paid, by wire transfer of immediately available funds, the amounts payable pursuant to the Payoff Letters (the "Payoff Amount") to the account(s) designated in the Payoff Letters;

(c) Buyer shall deposit, or cause to be deposited, the Adjustment Holdback Amount with the Escrow Agent in accordance with the Escrow Agreement as security for any downward post-closing adjustment to the Purchase Price pursuant to Section 1.9;

(d) Buyer shall deposit, or cause to be deposited, the Indemnity Escrow Holdback Amount with the Escrow Agent in accordance with the Escrow Agreement as security for any indemnification claims made against Seller pursuant to Article VII;

(e) Buyer or Parent shall issue, or cause to be issued, to Seller (x) the Non-Indemnity Holdback Shares in book-entry form, and Buyer or Parent shall cause the record ownership of such Non-Indemnity Holdback Shares to be in the name of Seller (or in the names and percentage allocations of such other Persons as Seller may request via written notice to Buyer and Parent on a date that is no less than five (5) Business Days prior to Closing, all of whom shall be members of Seller), and (y) the Indemnity Holdback Shares in certificated form, and Buyer or Parent shall cause the record ownership of such Indemnity Holdback Shares to be in the name of Seller, subject to the Indemnity Holdback Share Pledge and the share lockup restrictions set forth in Section 1.9(c)(iii); provided, that, Buyer, Parent and Seller agree that if the Non-Indemnity Holdback Shares are issued directly to the members of Seller, each of the parties hereto shall treat each such issuance of shares for all Tax reporting purposes as a transfer to Seller, followed by a transfer by Seller to its members; and

(f) the Parties shall deliver or cause to be delivered the documents set forth in Section 1.10.

1.8 Closing. Subject to the terms and conditions of this Agreement, the purchase and sale of the Assets and the assumption of the Assumed Liabilities contemplated hereby shall take place at a closing (the "Closing") to be held at 10:00 am, Eastern time, on the date that is not more than five (5) Business Days after the last of the conditions to Closing set forth in Article VI have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), at the offices of Goodwin Procter LLP, 601 Marshall Street, Redwood City, California, or remotely via electronic exchange of documents and signatures, or at such other time or on such other date or at such other place as Seller and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the "Closing Date"); provided that any requirement to deliver documents at the Closing may be satisfied by the electronic delivery of facsimile or portable document format signatures in accordance with Section 9.5.

1.9 Estimated Closing Statement; Purchase Price Adjustment.

(a) Estimated Closing Statement. At least three (3) Business Days prior to the anticipated Closing Date, Seller shall deliver to Buyer a written statement (the "Estimated Closing Statement") consisting of (i) Seller's good faith estimate in reasonable detail (in each case

determined as of the Calculation Time, without giving effect to the transactions contemplated by this Agreement to take place at the Closing, in accordance with the Accounting Principles) of (x) the Closing Balance Sheet (the "Estimated Closing Balance Sheet"), (x) Closing Cash ("Estimated Closing Cash"), (y) Closing Working Capital (the "Estimated Closing Working Capital") and each element thereof, (z) the amount by which such Estimated Closing Working Capital differs from the Target Closing Working Capital (which may positive, negative or zero) and (ii) the Payoff Amount. If the Estimated Closing Working Capital as set forth in the Estimated Closing Statement is greater than Target Closing Working Capital, the "Estimated Working Capital Excess Amount" shall equal Estimated Closing Working Capital minus Target Closing Working Capital. If the Estimated Closing Working Capital as set forth in the Estimated Closing Statement is less than Target Closing Working Capital, the "Estimated Working Capital Deficiency Amount" shall equal Target Closing Working Capital minus Estimated Closing Working Capital. The "Estimated Cash Consideration" for purposes of Section 1.7 shall equal the Base Cash Consideration, plus the Estimated Closing Cash, plus the Estimated Working Capital Excess Amount (if any), less the Estimated Closing Working Capital Deficiency Amount (if any).

(b) Post-Closing Purchase Price Adjustment. No later than ninety (90) days after the Closing Date, Buyer shall prepare and deliver a statement (the "Final Closing Statement") consisting of the Buyer's good faith estimate in reasonable detail (and, in each case, determined as of the Calculation Time without giving effect to the transactions contemplated by this Agreement to take place at the Closing) and in accordance with the Accounting Principles, (i) the Closing Balance Sheet, (ii) the Closing Cash, (iii) the Closing Working Capital, (iv) the Closing Working Capital Excess Amount (if any), (v) the Closing Working Capital Deficiency Amount (if any), and (vi) the Cash Consideration. During the forty-five (45) day period following Buyer's delivery of the Final Closing Statement, Seller shall have, for the purposes of evaluating the Final Closing Statement, reasonable access (A) to the appropriate books and records of Buyer, including working papers, supporting schedules, calculations and other documentation used in the preparation of the Final Closing Statement and (B) to Buyer's officers, employees, agents and representatives as may be reasonably required in connection with the review or analysis of the Final Closing Statement. The Final Closing Statement and the Cash Consideration set forth therein shall be final and binding upon the Parties, and deemed accepted by Seller, unless within forty-five (45) days after Seller's receipt thereof, Seller provides Buyer with a written Objection Notice with respect to the Final Closing Statement (an "Objection Notice"). The Objection Notice shall specify in reasonable detail each item on the Final Closing Statement that Seller disputes and the nature of any objection so asserted and shall be limited to disputes or objections based on mathematical errors or based on Cash Consideration not being calculated in accordance with this Agreement (including, without limitation, not being calculated in accordance with the Accounting Principles). Seller shall be deemed to have agreed with all amounts and items contained in the Final Closing Statement to the extent such amounts and items are not raised in the Objection Notice. If Seller properly delivers an Objection Notice, any dispute raised therein shall be resolved pursuant to the procedures set forth in Section 1.11.

(c) Final Cash Consideration. The Cash Consideration shall be finally determined pursuant to Section 1.9(b) and, if applicable, Section 1.11. No later than five (5) Business Days after the date on which the Cash Consideration is finally determined:

(i) if Cash Consideration equals or exceeds Estimated Cash Consideration, then (x) Buyer shall pay to Seller an amount in cash equal to any excess of Cash Consideration over Estimated Cash Consideration (without any interest thereon) by wire transfer of immediately available funds to the account designated in writing by Seller and (y) Buyer and Seller shall jointly direct the Escrow Agent to release the full Adjustment Holdback Amount to Seller;

(ii) if Estimated Cash Consideration exceeds Cash Consideration, then Buyer and Seller shall jointly direct the Escrow Agent to (x) release to Buyer from the Adjustment Holdback Amount an amount equal to such excess and (y) to the extent the Adjustment Holdback Amount is greater than such excess, to release to Seller any remaining portion of the Adjustment Holdback Amount; and

(iii) if Estimated Cash Consideration exceeds Cash Consideration, and the excess is greater than the Adjustment Holdback Amount, (x) Buyer and Seller shall jointly direct the Escrow Agent to release to Buyer the full amount of the Adjustment Holdback Amount and (y) Seller shall pay to Buyer, in cash (without any interest thereon), by wire transfer of immediately available funds to the account designated in writing by Buyer, an amount equal to (1) the excess of Estimated Cash Consideration over Cash Consideration minus (2) the Adjustment Holdback Amount, and (z) if Seller fails to make the payment to Buyer pursuant to the foregoing clause (y) then, in addition to any other rights or remedies available to Buyer, Buyer shall be entitled to claim any amounts due to Buyer pursuant to this Section 1.9(c)(iii) from the Indemnity Holdback Amount.

(d) Indemnity Holdback Amount. Until (and including) the Holdback Release Date, and in order to secure Seller's indemnification obligations set forth in Article VII, (i) the Escrow Agent will retain the Indemnity Escrow Holdback Amount, which shall be paid or released in accordance with Section 7.6(c), (ii) Seller will retain, and will not sell, transfer, assign or otherwise distribute to its members or any other Person, any right, title or interest of any kind in the Indemnity Holdback Shares, other than as contemplated by Article VII (the "Indemnity Holdback Restriction"), and (iii) Seller will grant to Buyer a perfected first priority security interest in the Indemnity Holdback Shares (the "Indemnity Holdback Share Pledge").

1.10 Deliveries at Closing.

(a) At or prior to the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

(i) duly executed counterpart to bills of sale, in forms and substance satisfactory to Buyer, with respect to the Assets (the "Bills of Sale");

(ii) a duly executed counterpart to an assignment and assumption agreement, in form and substance satisfactory to Buyer, with respect to the Acquired Agreements and the Assumed Liabilities relating thereto (the "Agreements Assignment and Assumption Agreement");

(iii) a duly executed counterpart to assignment and assumption agreements, in form and substance satisfactory to Buyer, with respect to the Acquired IP and the Assumed Liabilities relating thereto (the "IP Assignment and Assumption Agreements");

(iv) a duly executed counterpart to an assignment and assumption agreement, in form and substance satisfactory to Buyer, with respect to the Acquired Leases and the Assumed Liabilities relating thereto (the "Lease Assignment and Assumption Agreement");

(v) a duly executed counterpart to an assignment and assumption agreement, in form and substance satisfactory to Buyer, with respect to the Assumed Liabilities not otherwise assumed pursuant to the agreements set forth in paragraphs (ii) to (iv) above (the "Other Assumed Liabilities Assignment and Assumption Agreement");

(vi) a duly executed counterpart to the Escrow Agreement;

(vii) copies of all notices, consents (including consents to assignment), compliance with notices (or waivers thereto) of rights of first refusal or similar rights, approvals, and certain other assignments as directed by Buyer, with respect to the Contracts (including the Acquired Agreements, Acquired IP and Acquired Leases) set forth in Schedule 1.10(a)(vii), in each case, in form and substance satisfactory to Buyer;

(viii) a true and correct copy of the resolutions of Seller's managers authorizing the execution, delivery and performance of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby;

(ix) a true and correct copy of the Seller Member Approval;

(x) a true and correct copy of each Payoff Letter, duly executed by each borrower and creditor thereunder, in customary form reasonably satisfactory to the Buyer and providing for the termination of such Indebtedness and related documents and the termination and release of all Encumbrances securing such Indebtedness;

(xi) a duly executed certificate pursuant to Treasury Regulations Section 1.1445-2(b) evidencing that Seller is not a foreign person within the meaning of Section 1445 and Section 1446 of the Code;

(xii) documents evidencing the Indemnity Holdback Share Pledge, reasonably satisfactory to Buyer;

(xiii) a true and correct copy of Seller's IRS Form W-9;

(xiv) duly completed at-will onboarding documentation of Key Employees; and

(xv) such other documents as Buyer may reasonably request to effect the intent of this Agreement and consummate the transactions contemplated hereby.

(b) At or prior to the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

(i) a duly executed counterpart to the Bills of Sale;

(ii) a duly executed counterpart to the Agreement Assignment and Assumption Agreement;

(iii) duly executed counterparts to the IP Assignment and Assumption Agreements;

(iv) a duly executed counterpart to the Lease Assignment and Assumption Agreement;

(v) a duly executed counterpart to the Other Assumed Liabilities Assignment and Assumption Agreement;

(vi) duly executed counterparts to at-will on-boarding documentation of Key Employees;

(vii) a duly executed counterpart to the Escrow Agreement; and

(viii) such other documents as the Seller may reasonably request to effect the intent of this Agreement and consummate the transactions contemplated hereby.

1.11 Post-Closing Dispute Resolution Procedures. During the thirty (30) Business Day period following the date on which a proper Objection Notice is received by Buyer, Buyer and Seller shall seek in good faith to resolve any objections contained therein. If Buyer and Seller are unable to resolve the dispute within such thirty (30) Business Day period, then any disputed matter set forth in the Objection Notice, as the case may be, that remains unresolved shall be submitted by Buyer for final determination to Marcum LLP or, if Marcum LLP declines to serve, such other independent accounting firm of national reputation selected by the mutual agreement of Buyer and Seller (the "Independent Accounting Firm"). The Independent Accounting Firm shall, based solely on the presentations made by Buyer and Seller and within thirty (30) days after its appointment, render a written report as to the calculation of the Closing Working Capital; provided that in no event shall the Independent Accounting Firm's determination of Cash Consideration, as the case may be, be outside the range of disagreement between Buyer and Seller. The Independent Accounting Firm shall have exclusive jurisdiction over, and resort to the Independent Accounting Firm shall be the sole recourse and remedy of the Parties against one another or any other Person with respect to, any disputes arising out of or relating to the calculation of Cash Consideration; provided that no Party will be precluded by this sentence from enforcing the determination of the Independent Accounting Firm. The Independent Accounting Firm's determination shall be conclusive and binding on all Parties and shall be enforceable in a court of law. In connection with the resolution of any dispute, each Party shall pay its own fees and expenses, including legal, accounting and consultant fees and expenses. The Independent Accounting Firm shall calculate the allocation of its fees and expenses between Buyer and Seller based upon a fraction (expressed as a percentage), (x) the numerator of which is the aggregate dollar value of the amount of Cash

Consideration actually contested that is not awarded to Buyer or Seller (as the case may be) and (y) the denominator of which is the aggregate dollar value of Cash Consideration actually contested between the Parties. For purposes of the preceding sentence, the amount of Cash Consideration actually contested by each of Buyer or Seller shall be determined by reference to their respective written presentations submitted to the Independent Accounting Firm pursuant to this Section 1.11. For example and solely for the purposes of illustration, if Seller claims that the appropriate adjustments are $1,000 greater than the amount determined by Buyer and if the Independent Accounting Firm ultimately resolves such dispute by awarding to Seller $300 of the $1,000 contested, then the fees, costs and expenses of the dispute resolution process contemplated by this Section 1.11 will be allocated 30% (i.e., 300 divided by 1,000, expressed as a percentage) to Buyer and 70% (i.e., 700 divided by 1,000, expressed as a percentage) to Seller.

1.12 Reserved.

1.13 Withholding Rights. Buyer shall be entitled to deduct and withhold such amounts as it is required to deduct and withhold with respect to the making of any payment under any provision of federal, state, local or foreign Tax Law; *provided* that Buyer shall use commercially reasonable efforts to notify Seller of such amounts and provide Seller or the relevant recipient a reasonable opportunity to mitigate or eliminate any withholding with respect to payments pursuant to this Agreement and the Parties shall use commercially reasonable efforts to cooperate to eliminate any withholding on payments made pursuant to this Agreement. To the extent that amounts are so withheld by Buyer and properly remitted to the applicable Governmental Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to Seller. Buyer shall timely pay such withheld amounts to the applicable Governmental Authority. As of the date hereof, Buyer is not aware of any withholding obligations under any provision of federal, state, local or foreign Tax Law that would require Buyer to deduct or withhold any amounts pursuant to this Section 1.13, subject to receipt of Seller's IRS Form W-9.

1.14 Allocation of Purchase Price. Buyer and Seller agree upon the allocation of the Purchase Price and Assumed Liabilities (the "Aggregate Consideration") as set forth on Schedule 1.14, subject to adjustments of the Purchase Price pursuant to Section 1.9 and, if applicable, Section 1.11 (the "Allocation Schedule"). The Allocation Schedule shall comply with the allocation method required by Section 1060 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, shall reflect the parties' agreement as to the fair market value of each of the Assets immediately prior to Closing, and shall be reflected on IRS Form 8594 (Asset Acquisition Statement under Section 1060), and shall be used by the Parties in preparing their respective income tax returns. The Parties covenant and agree with each other that none of them will take a position on any income tax return or in any other proceeding that is in any way inconsistent with the allocation set forth on Schedule 1.14, subject to adjustments of the Aggregate Consideration (with such adjustments to be allocated among the Assets as reasonably agreed by the parties), except as otherwise required by a taxing authority subsequent to an audit defended in good faith.

1.15 Tax Treatment. Any payment by Buyer or Seller, as the case may be, pursuant to Section 1.9 or Article VII will be treated as an adjustment to the Purchase Price, unless otherwise required by applicable Law.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF SELLER

In order to induce Buyer to enter into this Agreement, Seller represents and warrants to Buyer and Parent (except as set forth in the Schedules of Seller, which shall be arranged in sections corresponding to the sections of this Agreement; provided that disclosures in any section of the Schedules shall qualify any other section in this Agreement to which it is reasonably apparent from a reading of such Schedules without assuming any knowledge of the matters disclosed therein that such information is relevant to any other section), as follows:

2.1 Organization and Qualification. Seller and each other member of the Company Group is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of its formation, with power and authority to carry on its business (including the Business) and to own or lease and to operate its properties as and in the places where such business is conducted and such properties are owned, leased or operated, except where the failure to be in good standing or have such authority would not have a Material Adverse Effect. Seller and each other member of the Company Group is duly qualified or licensed to do business in each jurisdiction in which the properties and assets owned, leased or operated by the respective Company Group member in the conduct of the Business or the nature of the Business makes such qualification necessary, except where the failure to be so licensed or qualified would not have a Material Adverse Effect. Seller has delivered to Buyer complete and correct copies of the organizational documents of each member of the Company Group (including the Seller Operating Agreement), in each case, as amended and in effect on the date hereof. Neither the Seller nor any other member of the Company Group is in violation of any of the provisions of its organizational documents in any material respect.

2.2 Contemplated Transactions General Compliance.

(a) Enforceability; Authority. Seller has all requisite power and authority to enter into this Agreement and the other Ancillary Agreements to be executed and delivered by Seller, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Assuming due authorization, execution and delivery of this Agreement by the other Parties hereto, this Agreement constitutes a valid and binding obligation of Seller and any other member of the Company Group, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally and by general principles of equity (whether in a proceeding at law or in equity) (the "Creditor's Rights Exception"). The execution, delivery and performance of this Agreement and the other agreements contemplated hereby to be executed and delivered by Seller and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite action on the part of Seller and any other member of the Company Group, including all actions required pursuant to the terms of the Seller Operating Agreement, and no other proceedings on the part of Seller or any other member of the Company Group are necessary to authorize the execution, delivery or performance of this Agreement or the other

agreements contemplated hereby. The Seller has obtained the Seller Member Approval in accordance with the terms of the Seller Operating Agreement.

(b) No Conflict. The execution and delivery of this Agreement and the other agreements contemplated hereby and the consummation or performance of any of the transactions contemplated hereby or thereby will not: (i) conflict with or violate any provisions of the organizational documents of the Seller or any other member of the Company Group; or (ii) Breach any provisions of or result in the termination, cancellation, modification, maturation or acceleration of, any rights or obligations under any Material Contract, Order or Law to which the Seller or any other member of the Company Group is subject or by which any member of the Company Group's properties or assets is bound except, in the case of this clause (ii), in respect of the notice and consent requirements set forth in Schedule 2.2(d), except in the cases of clauses (i) and (ii), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect.

(c) Subsidiaries. Seller has no Subsidiaries.

(d) Consents; Governmental Filings. Except as set forth in Schedule 2.2(d), neither Seller nor any other member of the Company Group is required as the result of any Law, Order, Material Contract or the acquisition by Buyer of any Asset to (i) give any notice to (including notice to satisfy rights of first refusals or such similar rights of Third Parties) or obtain any consent from any Third Party in connection with the execution and delivery of this Agreement, (ii) obtain consent in connection with the assignment of any Asset to Buyer, (iii) comply with or obtain a waiver regarding any right of first refusal or similar right held by a Third Party in connection with the assignment of any Asset to Buyer, or (iv) obtain approval from a Third Party with respect to any other agreements contemplated hereby or the consummation or performance of any of the transactions contemplated by this Agreement. No filings or registration with, notification to, or authorization, license, clearance, permit, qualification, waiver, order, consent or approval of any Governmental Authority (collectively, "Governmental Filings") are required in connection with the execution, delivery and performance of the transactions contemplated by this Agreement by Seller, except as stated on Schedule 2.2(d).

2.3 Financial Statements.

(a) Attached as Schedule 2.3 are true and complete copies of the Financial Statements. The Financial Statements have been prepared in accordance with the Accounting Principles and fairly present, as of their respective dates, in all material respects the financial position, results of operation and cash flows of the Business at the dates and for the relevant periods indicated. The balance sheets included in the Financial Statements do not include any material assets or liabilities not intended to constitute a part of the Business or the Assets after giving effect to the transactions contemplated hereby (other than the Excluded Assets and the Excluded Liabilities). The statements of income and retained earnings and statements of cash flows included in the Financial Statements do not reflect the operations of any entity or business not intended to constitute a part of the Business or the Assets after giving effect to the transactions contemplated hereby (other than the Excluded Assets and the Excluded Liabilities).

(b) Seller has devised and maintained systems of internal accounting controls with respect to the Business sufficient to provide reasonable assurances that (i) all transactions are executed in accordance with management's general or specific authorization, (ii) all transactions are recorded as necessary to permit the preparation of financial statements in conformity with the applicable past accounting practices and to maintain proper accountability for items and (iii) access to its property and assets is permitted only in accordance with management's general or specific authorization.

2.4 Indebtedness. Schedule 2.4 sets forth the Indebtedness of Seller and each other member of the Company Group as of the date of this Agreement, other than current liabilities incurred in the ordinary course of business consistent with past practice.

2.5 No Undisclosed Liabilities. Neither Seller nor any other member of the Company Group has any liabilities or obligations, whether known, unknown, absolute, accrued, contingent or otherwise and whether due or to become due, arising out of or relating to the Business or the Assets except (a) as set forth on Schedule 2.4 or Schedule 2.5, (b) as and to the extent reflected, disclosed or reserved against in the Latest Balance Sheet or specifically disclosed in the notes thereto and (c) for liabilities and obligations that were incurred after the Latest Balance Sheet Date in the ordinary course of business consistent with past practice and reflected in the Estimated Closing Balance Sheet included in the Estimated Closing Statement.

2.6 Absence of Certain Changes. Except as set forth in Schedule 2.6 or as otherwise expressly contemplated by this Agreement, from the Latest Balance Sheet Date until the date of this Agreement, (a) the Business has been conducted in all material respects in the ordinary course of business, (b) there have been no changes, events, results, occurrences, states of fact, circumstances or developments that would constitute a Material Adverse Effect and (c) Seller has not taken (or not taken) any action that, if taken (or not taken) from the date hereof would have required Buyer's consent under Section 4.1.

2.7 Material Contracts.

(a) Schedule 2.7(a) sets forth all Contracts, of the type described below, to which Seller and any other member of the Company Group is a party and relate to the Business or the Assets or by which any of the Assets are bound, other than the Indebtedness disclosed pursuant to Section 2.4; Leases disclosed pursuant to Section 2.8(c); the Inbound Licenses and Outbound Licenses; the Benefit Plans disclosed pursuant to Section 2.13(a); the insurance policies disclosed pursuant to Section 2.16, and the Affiliate Contracts disclosed pursuant to Section 2.17 (all such Contracts, together with the Contracts disclosed on Schedule 2.7(a), the "Material Contracts"):

(i) each Contract that involves aggregate consideration in excess of $10,000 and that, in each case, cannot be cancelled by Seller without penalty or without more than thirty (30) days' notice;

(ii) each Contract or group of related Contracts with the same party for the purchase by any member of the Company Group of products or services (A) under which the undelivered balance exceeds $10,000, or (B) which based on monthly payments prior

to the Closing Date, involves a payment obligation of any member of the Company Group in excess of $3,000 individually or in the aggregate;

(iii) each Contract or group of related Contracts with the same party for the sale of products or services by any member of the Company Group (A) under which the undelivered balance exceeds $10,000, or (B) which based on monthly payments prior to the Closing Date, involves a payment obligation to any member of the Company Group in excess of $3,000 individually or in the aggregate;

(iv) each Contract that requires a member of the Company Group to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;

(v) each Contract that (A) prohibits any member of the Company Group from engaging in any line of business or competing with any Person or in any geographic area (B) restricts the Persons to whom a member of the Company Group may sell products or deliver services, (C) contains an exclusivity obligation, most-favored-nation provision or "best price" obligation enforceable against a member of the Company Group;

(vi) each Contract that grants any rights of first refusal, rights of first offer or other similar rights to any Person with respect to any asset of a member of the Company Group;

(vii) each Contract pursuant to which a member of the Company Group has acquired or disposed of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(viii) each Contract for the employment of any officer or individual employee, and any Contract for the provision of consulting services by any individual person or any Contract for the provision of services by any independent contractor, in each case which involves aggregate consideration in excess of $10,000 per year and which cannot be terminated without penalty by the member of the Company Group party thereto on notice of thirty (30) days or less;

(ix) any Contract that is a settlement or conciliation agreement with any Governmental Authority or Person, relating to the resolution or settlement of an actual or threatened Action and pursuant to which the Company Group will have any material outstanding obligation after the date of this Agreement;

(x) all Contracts that provide for the indemnification by a member of the Company Group of any Person or the assumption of liability of any Person and that are otherwise Material Contracts;

(xi) each lease or agreement under which a member of the Company Group is lessor of, or permits any third party to hold or operate, any tangible property, real or personal, owned by any member of the Company Group;

(xii) all Contracts with any Governmental Authority;

(xiii) any Contracts that provide for any joint venture, partnership or similar arrangement by any member of the Company Group;

(xiv) all collective bargaining agreements or Contracts with any union or other labor organization;

(xv) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(xvi) each Contract pursuant to which a member of the Company Group may be required to pay commissions or royalty payments; and

(xvii) any Contract involving a franchise arrangement with any third party (including an Affiliate Contract) involving any Company Group Intellectual Property.

(b) Each Material Contract is valid and binding on the member of the Company Group that is party thereto in accordance with its terms and is in full force and effect, subject to the Creditor's Rights Exception. Neither Seller nor, to Seller's Knowledge, any other party thereto is in Breach in any material respect under any Material Contract. To Seller's Knowledge, the other parties to the Material Contracts have fully complied with their obligations thereunder. Except as set forth in Schedule 2.7(b), no party has delivered written notice of termination and, to Seller's Knowledge, no party has threatened to exercise any termination right with respect to any Material Contract. Except as set forth in Schedule 2.7(b), to Seller's Knowledge, no event or circumstances has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. True, correct and complete copies of the Material Contracts, including all amendments, schedules, exhibits and other attachments thereto, have been delivered to Buyer prior to the date hereof.

(c) Except as set forth in Schedule 2.7(c), no consent of or notice to any Third Party is required under any Material Contract as a result of or in connection with, and the terms of and enforceability of any Material Contract will not be affected by, the execution, delivery and performance of this Agreement or any of the other agreements contemplated hereby or the consummation of the transactions contemplated hereby and thereby.

2.8 Assets.

(a) Title to Assets, etc. Seller (or another member of the Company Group, as applicable) has good and valid title to, or otherwise has the right to use pursuant to a valid and enforceable lease, license or similar contractual arrangement, all of the Assets except as may be disposed of in the ordinary course of business consistent with past practice after the date hereof and in accordance with this Agreement, in each case free and clear of any Encumbrance other than Permitted Encumbrances. Other than this Agreement, there are no agreements with, options or rights granted in favor of, any person to directly or indirectly acquire any Asset, or any interest therein or any tangible properties or assets of a member of the Company Group, other than as set

forth in Schedule 2.2(d). No tangible assets or properties used by each member of the Company Group in the conduct of its business, as currently conducted, are held in the name or in the possession of any person or entity other than such member of the Company Group. There are no voting trusts, proxies or other agreements, understandings or obligations in effect with respect to the voting, transfer or sale (including any rights of first refusal, rights of first offer or drag-along rights), issuance (including any pre-emptive or anti-dilution rights), redemption or repurchase (including any put or call or buy-sell rights), or registration (including any related lock-up or market standoff agreements) with respect to any of the Assets or any member of the Company Group, except as set forth in Schedule 2.2(d).

(b) Sufficiency of Assets, etc. The Assets constitute all of the assets required for the conduct of the Business as conducted on the date hereof. To the Knowledge of Seller, there are no facts or conditions affecting any material Assets which would reasonably be expected, individually or in the aggregate, to interfere with the current use, occupancy or operation of such Assets.

(c) Real Property and Leases. No member of the Company Group currently owns or has in the past owned any real property. Schedule 2.8(c) sets forth true and correct addresses of all real property leased or rented by any member of the Company Group (the "Leased Property"). The Leased Property constitutes all of the facilities used or occupied in the conduct of the Business as currently conducted. Each parcel of the Leased Property is the subject of a written lease agreement (each, a "Lease"), and there are no oral terms inconsistent with the written terms thereof. To the Knowledge of Seller, the Company Group's use and operation of the Leased Property conform to all applicable Laws, Permits and Orders in all material respects. Seller has not received written notice from landlords or any Governmental Authority that: (i) relates to violations of building, zoning, safety or fire ordinances or regulations; (ii) claims any defect or deficiency with respect to any of such properties; or (iii) requests the performance of any repairs, alterations or other work to the Leased Property, in each case that has not been subsequently addressed or corrected. Except as set forth in Schedule 2.8(c), Seller and each other member of the Company Group has exclusive possession of each Leased Property, there are no leases, subleases, licenses, concessions or other agreements, written or oral, granting to any other party or parties the right of use or occupancy with respect to such Leased Property. The Leased Property has been supplied with utilities and other services reasonably sufficient for the operation of the Business as currently conducted. All Leases are valid and binding agreements, enforceable in accordance with their respective terms, are in full force and effect and are not in default.

2.9 Intellectual Property.

(a) All of the Intellectual Property Assets are held by Seller or another member of the Company Group and are Assets being acquired pursuant to Article I of this Agreement. Schedule 2.9(a) lists all issued patents, registered trademarks, registered copyrights, registered domain names and all applications for the registration or issuance of any of the foregoing owned by or exclusively licensed to any member of the Company Group that are Intellectual Property Assets (collectively, the "Business Registered Intellectual Property"), indicating as to each item as applicable: (i) the jurisdictions in which such item is issued or registered or in which any application for issuance or registration has been filed, (ii) the respective issuance, registration, or

application number of the item, (iii) the dates of application, issuance or registration of the item, (iv) expiration dates (for domain names only), and (v) name of registrant.

(b) Each item of the Business Registered Intellectual Property is (i) subsisting in good standing, and not the subject of any pending or, to Seller's Knowledge, threatened proceeding before any Governmental Authority challenging its extent, validity, enforceability or Seller's ownership thereof (except in the course of prosecution thereof), and (ii) to Seller's Knowledge and excluding applications, valid and enforceable.

(c) Schedule 2.9(c) lists all material Contracts, to which a member of the Company Group is a party, relating to the development, ownership, or license of any rights under any Intellectual Property Assets, including licenses, sublicenses, consents and other agreements: (i) by which any member of the Company Group is authorized to use any material Intellectual Property Assets ("Inbound Licenses"), other than commercially available off the shelf software that is not incorporated into any commercial product or service of any member of the Company Group that is software, for which the relevant member of the Company Group pays less than $10,000 in licensing or other fees per annum; (ii) by which any member of the Company Group is restricted from the use or exploitation of any material Intellectual Property Assets (including, co-existence agreements and settlement agreements); (iii) by which an Intellectual Property Asset owned or purported to be owned by a member of the Company Group is or has been developed for such member of the Company Group, assigned to such member of the Company Group, or assigned by such member of the Company Group to a Third Party (excluding agreements with Employees and contractors entered into in the ordinary course of business that grant all rights in such IP to such member of the Company Group); and (iv) by which a member of the Company Group authorizes a Third Party to use any material Intellectual Property Assets ("Outbound Licenses"), other than non-exclusive licenses granted in the ordinary course of business to (A) customers of the Business pursuant to standard end-user agreements of each member of the Company Group (to the extent applicable), the form of which has been provided to special counsel for Buyer, consistent with past practice in connection with the use of products or services of the Business, or (B) service providers, distributors or other business partners in the ordinary course of business, in connection with the performance of services for the Business or relevant activities regarding its products or services.

(d) Seller has taken all reasonable measures and steps to protect all confidentiality and value of the Intellectual Property Assets.

(e) All former and current employees and contractors of each member of the Company Group that have been involved in the development of any Intellectual Property for a member of the Company Group have executed written instruments with the applicable member of the Company Group that assign to such member of the Company Group all rights, title and interest in and to any and all such Intellectual Property, including as applicable, inventions, improvements, ideas, discoveries, developments, writings, works of authorship, know-how, processes, methods, technology, data, information and other intellectual property.

(f) The Seller or another member of the Company Group is the sole owner of the Intellectual Property Assets that are owned by the Company Group, free and clear of all Encumbrances, except Permitted Encumbrances or any requirement of any past (if outstanding),

present or future payment. The Seller or another member of the Company Group owns all right, title and interest in and to, or has a valid and enforceable license, sublicense, or right to use, all of the Intellectual Property Assets used in and necessary for the conduct of the Business.

(g) Except as set forth in Schedule 2.9(g), neither the Seller nor any other member of the Company Group has any pending, unresolved notice, claim, demand or other assertion since January 1, 2018 made to or, as of the date hereof, from any other Person, including for the avoidance of doubt, any cease and desist letter or offer of license, (i) alleging any infringement, dilution or misappropriation (including, challenging the use) by a member of the Company Group of any other Person's Intellectual Property with respect to the Business, (ii) challenging the ownership, use, validity or enforceability of any Intellectual Property Assets owned by a member of the Company Group or (iii) relating to the security of Company Data.

(h) Except as set forth in Schedule 2.9(h), (i) to Seller's Knowledge the operation of the Business or any activity by any member of the Company Group with respect to the Business does not infringe upon, violate or constitute misappropriation of, and has not infringed, violated or constituted misappropriation of, the Intellectual Property of any other Person, provided that the foregoing representation and warranty shall with respect to patent infringement be limited to Seller's Knowledge, and (ii) to Seller's Knowledge, the Intellectual Property Assets owned by a member of the Company Group and used in the operation of the Business has not been infringed, diluted or misappropriated by any other Person.

(i) Buyer has reviewed Seller's privacy policies located on Seller's applicable websites and domains, including any security and data privacy policies maintained on each website and each mobile application of Seller (collectively, "Company Data"), which are compliant with applicable Law in all material respects. The Company Group's practices with regard to the collection, dissemination, safeguarding and use of Company Data are and have been in compliance with all Privacy Commitments. The Seller and the Company Group have taken all organizational, physical, administrative and technical measures required by Privacy Commitments and consistent with standards prudent in the industry in which the Seller and the Company Group operate to protect the integrity, security and operations of all Assets, IT Infrastructure and all Personal Information. To Seller's Knowledge, there has been no material loss of, or intentional and unauthorized access, use, disclosure or modification of any Company Data. Neither Seller nor any other member of the Company Group has received any inquiries from or been subject to any audit or Litigation by any Governmental Authority regarding Company Data. No Litigation alleging (a) a material violation of any person's privacy rights or (b) unauthorized access, use or disclosure of Company Data has been asserted or threatened against Seller or any other member of the Company Group.

(j) In connection with each third-party servicing, outsourcing, processing, or otherwise using Personal Information collected, held, or processed by or on behalf of the Seller and/or the Company Group, the Seller and Company Group have in accordance with applicable Privacy Commitments entered into valid, binding an enforceable written data processing agreements with any such third party to protect and secure Personal Information from data security incidents and restrict use of Personal Information to those authorized or required under the servicing, outsourcing, processing, or similar arrangement.

2.10 Litigation. Except as set forth on Schedule 2.9(i), since January 1, 2018, there has not been, and there is no pending or, to Seller's Knowledge, threatened Litigation or Order: (i) by or against any member of the Company Group or any of the Assets; (ii) that challenges the transactions contemplated by this Agreement and the agreements contemplated hereby; or (iii) that seeks to enjoin or prohibit consummation of, or seeks other equitable relief with respect to, the transactions contemplated by this Agreement and the agreements contemplated hereby. There is no unsatisfied judgment or any open injunction binding upon any member of the Company Group that would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Seller to enter into and perform its obligations under this Agreement. Since January 1, 2018, there have been no misclassification claims regarding any employee (including any Business Employee) or independent contractor against Seller or any other member of the Company Group.

2.11 Compliance with Laws or Orders; Permits; Regulatory.

(a) Except as set forth on Schedule 2.11(a), since January 1, 2018, to the Knowledge of Seller, no member of the Company Group is or has been in Breach of any Law or Order in any material respect. Since January 1, 2018, no member of the Company Group has received notice of any violation of any applicable Law from any Governmental Authority.

(b) Seller holds and is in compliance with, to the extent required by applicable Law, all Permits required for the conduct of the Business and such Permits required for the conduct of the Business are Assets being acquired pursuant to Article I of this Agreement. Schedule 2.11(b) lists all Permits issued in connection with the Business, including the names of the Permits, their holders, and their respective dates of issuance and expiration.

2.12 Environmental Matters. Seller has complied and is in compliance in all material respects with all applicable Environmental Laws pertaining to the Business or the Assets and the use and ownership thereof. No violation by any member of the Company Group is being or has been alleged in writing or, to the Knowledge of Seller, orally of any applicable Environmental Law relating to the Business or the Assets or the use or ownership thereof.

2.13 Employee Benefit Plans.

(a) Schedule 2.13(a) sets forth a complete and correct list of all material Company Benefit Plans. None of the Company Benefit Plans is a Standalone Plan and, except as set forth on Schedule 2.13(a), neither the Seller nor any other member of the Company Group has any Liabilities under, or with respect to, any Company Benefit Plan. With respect to each material Company Benefit Plan, Seller has made available to Buyer a complete and correct copy or, if not written, summary of the applicable plan document.

(b) Each Company Benefit Plan (including any related trust) has been established, operated and administered in substantial compliance with its terms and applicable Laws, including ERISA, the Code, and the Patient Protection and Affordable Care Act of 2010. No Company Benefit Plan is intended to be qualified under Section 401(a) of the Code and no member of the Company Group has maintained, sponsored or contributed to any Company Benefit Plan intended

to be qualified under Section 401(a) of the Code. As of the date of this Agreement, there is no pending or, to Seller's Knowledge, threatened material Action relating to any Company Benefit Plan with respect to the Business Employees, except for routine claims for benefits, which could reasonably be expected to result in any material liability to the Company.

(c) No member of the Company Group or any of their ERISA Affiliates has ever (i) maintained, sponsored, contributed to or has any obligation to contribute to (whether contingent or otherwise) any plan that is subject to Title IV of ERISA, or (ii) has any liability (contingent or otherwise) with respect to, any plan that is subject to Title IV of ERISA. There are no circumstances under which Buyer or any of its Affiliates could reasonably expect to be assessed any Liability under Title IV of ERISA or Section 412 or 430 of the Code by reason of being treated as a single Person with Seller and its Affiliates prior to the Closing. No Company Benefit Plan is subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code, or is a "multi-employer plan" (as defined in Section 3(37) of ERISA). The Company has not withdrawn from any pension plan under circumstances resulting (or expected to result) in a liability to the Pension Benefit Guaranty Corporation. No Company Benefit Plan provides welfare benefits after termination of employment except to the extent required by Section 4980B of the Code.

(d) Except as set forth on Schedule 2.13(d), the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not, whether alone or in combination with any other event, (i) entitle any Business Employee to severance pay or any other payment, (ii) result in any payment becoming due, accelerate the time of payment or vesting of benefits, or increase the amount of compensation due to any Business Employee, (iii) result in any forgiveness of indebtedness, trigger any funding obligation in respect of any Company Benefit Plan or otherwise or (iv) result in any "payment" to any "disqualified individual" (in each case within the meaning of Treasury Regulation Section 1.280G-1) that could reasonably be construed, individually or in combination with any other such payment, to constitute an "excess parachute payment" (within the meaning of Section 280G(b)(1) of the Code). No Person is entitled to receive any additional payment (including any tax gross-up or other payment) from any member of the Company Group as a result of the imposition of the excise Taxes under Section 4999 of the Code or any Taxes required by Section 409A of the Code or due to loss of any Tax deduction under Section 280G of the Code.

2.14 Labor.

(a) Schedule 2.14(a) sets forth a list, as of the date hereof, of all Business Employees. Seller has provided or made available to Buyer, as of the date hereof, for each Business Employee, such employee's title, annual base salary, the date of hire of each such employee and each such employee's principal work location.

(b) No member of the Company Group is a party to, or bound by, any collective bargaining agreement and there are no labor unions or other organizations representing, or to the Seller's Knowledge purporting or attempting to represent any Business Employees. There is no pending or, to Seller's Knowledge, threatened, and there has not been, any strike, lockout, slowdown, or work stoppage by or with respect to the Business Employees. The consent of, consultation of or the rendering of formal advice by any labor or trade union, works council or any

other employee representative body is not required for the execution and delivery of this Agreement by the Seller or the consummation of the transactions contemplated hereby. There is no unfair labor practice charge or complaint, grievance or labor arbitration, pending or threatened, against Seller before the National Labor Relations Board or any Governmental Authority or arbitrator.

(c) To the Knowledge of Seller, Seller, each other member of the Company Group, and each of their Affiliates is, and since January 1, 2018 has been, in compliance in all material respects with all applicable Laws respecting labor, employment and employment practices, including all Laws respecting terms and conditions of employment or engagement, fair employment practices, employment standards, workers' compensation, meal and rest breaks, occupational safety and health requirements, plant closings, wages and hours, pay equity, worker classification, benefit plan participation, discrimination, sexual harassment, affirmative action, work authorization, immigration, Form I-9 matters, requirements, guidelines and recommendations in response to the COVID-19 pandemic (including, but not limited to, the Coronavirus Aid, Relief, and Economic Security Act or the American Rescue Plan Act), continuation coverage under group health plans, pension commitments, disability rights or benefits, equal opportunity, human rights, labor relations, employee leave issues and unemployment insurance and related matters. With respect to each individual who has rendered services to or on behalf of the Business, whether directly or indirectly (including through a third person), Seller, each other member of the Company Group, and each of their Affiliates has accurately classified each such individual as an employee, independent contractor, or otherwise under any and all applicable Laws, and each such individual classified as an employee has been properly classified as exempt or nonexempt under any and all applicable Laws. Seller and its Affiliates have not, any time within the six (6) months preceding the date of this Agreement, had any "plant closing" or "mass layoff" (as defined in the WARN Act) or other terminations of employees that would create any obligations upon, or liabilities for Buyer under the WARN Act or similar state and local laws.

(d) Except as would not result in material liability for the Company Group: (i) each member of the Company Group has fully and timely paid all wages, salaries, wage premiums, commissions, bonuses, severance and termination payments, fees, and other compensation that have come due and payable to its current or former employees and independent contractors, (ii) each individual currently employed, or who was since January 1, 2018 employed, by a member of the Company Group is and has been properly classified under applicable wage and hour Laws, and (iii) each individual who is providing, or since January 1, 2018 has provided, services to a member of the Company Group and is and has been classified or treated as an independent contractor, consultant, leased employee, or other non-employee service provider is and has been properly classified and treated as such for all applicable purposes.

(e) There are no complaints, lawsuits or other proceedings pending or, to Seller's Knowledge, threatened against Seller, any other member of the Company Group, or any of their Affiliates brought by or on behalf of any Business Employee or any current or former prospective employee or individual service provider of Seller or any other member of the Company Group, including any pending or threatened complaint filed by any such individual with the National Labor Relations Board, the Equal Employment Opportunity Commission, or any equivalent Governmental Authority responsible for the prevention of unlawful employment practices.

(f) There is no pending or, to Seller's Knowledge, threatened claim or litigation against Seller or any member of the Company Group with respect to allegations of sexual harassment, discrimination or other workplace misconduct, and (i) there have been no reported internal or external complaints accusing any supervisory or managerial Business Employee (or employee of Seller, any member of the Company Group, and their Affiliates who performed services for the Business) of sexual harassment, discrimination or other workplace misconduct and (ii) there has been no settlement of, or payment arising out of or related to, any litigation or complaint with respect to sexual harassment, discrimination or other workplace misconduct. No member of the Company Group reasonably expects any material liabilities with respect to any allegations of sexual harassment, discrimination or other workplace misconduct, and no member of the Company Group is aware of any such allegations relating to its officers, directors, employees, contractors, or agents that, if known to the public, would bring the Company Group into material disrepute.

2.15 Taxes.

(a) All Tax Returns required to have been filed with respect to the Business, the Assets, Seller and any other member of the Company Group have been duly and timely filed. All such Tax Returns were correct and complete in all material respects. Except as set forth on Schedule 2.15(a), all Taxes due and owing by Seller (or any other member of the Company Group) with respect to the Business or the Assets have been duly and timely paid. Neither Seller (nor any other member of the Company Group) is currently the beneficiary of, or has made any currently outstanding request with respect to the Business or Assets for, any extension of time within which to file any Tax Return. No written notice of a claim is currently outstanding by a Governmental Authority in a jurisdiction where Seller (or any other member of the Company Group) does not pay a particular type of Tax or file a particular type of Tax Return that Seller (or any other member of the Company Group) is or may be subject to such taxation by, or required to file any such Tax Return with, that jurisdiction, in each case in respect of the Business or the Assets. There are no liens for Taxes (other than Taxes not yet due and payable) upon any of the Assets.

(b) All Taxes required to have been withheld with respect to the Business or the Assets have been duly and timely withheld and such withheld Taxes have been either duly and timely paid to the proper Governmental Authority or properly set aside in accounts for such purpose.

(c) Except as set forth on Schedule 2.15(c), no Tax audits, investigations or administrative or judicial Tax proceedings are currently being conducted in respect of the Business or the Assets. Neither Seller nor any other member of the Company Group has received from any Governmental Authority (including jurisdictions where Seller or such other member of the Company Group has not filed a Tax Return) in respect of the Business or the Assets any written (i) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted, or assessed by such Governmental Authority, in the case of each of (i) through (iii), that has not been resolved.

(d) Seller has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, in each case in respect of the Business or Assets, which waiver or extension is currently in effect.

(e) Seller has charged, collected and remitted on a timely basis all sales Taxes as required under applicable Tax Laws to be charged, collected and remitted on any sale, supply, provision of services or delivery by Seller in respect of the Business.

(f) Buyer will not be required to include any item of income in taxable income after the Closing as a result of any prepaid amount received by Seller or any other member of the Company Group prior to the Closing Date.

(g) Seller does not have any liability for the Taxes of any other Person whether under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, or by Contract (other than Contracts entered into in the ordinary course of business not primarily related to Taxes).

2.16 Insurance. Schedule 2.16 sets forth a complete and accurate list of all policies and Contracts for insurance (including coverage amounts, policy numbers, issuer, type of insurance, annual premiums and expiration dates) relating to the Assets or the Business as of the date hereof (collectively, the "Insurance Policies"), and complete and accurate copies of such Insurance Policies have been made available to Buyer. All Insurance Policies are in full force and effect in accordance with their terms. No written notice of cancellation, termination, premium increase or alteration of coverage has been received by Seller with respect to any Insurance Policy. All Insurance Policies (a) are valid and binding in accordance with their terms, (b) to Seller's Knowledge are provided by carriers who are financially solvent, and (c) have not been subject to any lapse in coverage. No insurance carrier under any Insurance Policy has issued a reservation of rights with regard to or disputed its obligation with respect to any material claim.

2.17 Affiliate Transactions. Except as set forth in Schedule 2.17, there are no Contracts, transactions, or arrangements between Seller or another member of the Company Group, on the one hand, and any Affiliate of Seller or another member of the Company Group, on the other hand (each, an "Affiliate Contract"). Except as set forth in Schedule 2.17, no current officer, director, manager or member of Seller or another member of the Company Group or, to Seller's Knowledge, any current member or employee, or any "affiliate" or "associate" (as those terms are defined in Rule 405 promulgated under the Securities Act) of any such Person, has had, either directly or indirectly, a material interest in: (a) any person or entity that purchases from, or sells, licenses or furnishes to, Seller or any other member of the Company Group any goods, property, technology, intellectual or other property rights or services; or (b) any Contract to which Seller or another member of the Company Group is a party or by which it may be bound.

2.18 Anti-Bribery; Anti-Money Laundering.

(a) Neither Seller, its Affiliates, nor any director, officer or employee of or, to Seller's Knowledge, agent, distributor, affiliate, representative or any other Person acting on behalf of, Seller or its Affiliates or the Business, has directly or indirectly made any bribes, rebates, payoffs, influence payments, kickbacks, illegal payments, illegal political contributions, or other payments, in the form of cash, gifts, or otherwise, or taken any other action, in violation of the Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010 or any other applicable anti-bribery or anti-corruption law (collectively, the "Anti-Bribery Laws").

(b) Seller has not received written notice that Seller or to Seller's Knowledge, its Affiliates, any director, officer or Employee of or, to Seller's Knowledge, agent, distributor, affiliate or representative acting on behalf of, Seller or its Affiliates or the Business, are or have been the subject of any investigation or inquiry by any Governmental Authority with respect to potential violations of Anti-Bribery Laws.

(c) Seller has not received any written notice that it, or to Seller's Knowledge, its Affiliates, any director, officer or Employee of or, to Seller's Knowledge, agent, distributor, affiliate or representative acting on behalf of, Seller or its Affiliates or the Business, have been the subject of current, pending, or, to Seller's Knowledge, threatened investigation, inquiry or enforcement proceedings for violations of Anti-Money Laundering Laws, or violated or received any notice, request or citation for any actual or potential noncompliance with Anti-Money Laundering Laws.

(d) The Business has been conducted in compliance with applicable Anti-Money Laundering Laws in all material respects.

2.19 Brokers' Fees. No member of the Company Group has incurred, or made commitments for, any brokerage, finders', investment bankers' or similar fee or commission in connection with the transactions contemplated by this Agreement.

2.20 Investigation. Seller has conducted its own independent investigation, review and analysis of Buyer. Seller acknowledges and agrees that (a) in making its decision to enter this Agreement and to consummate the transactions contemplated hereby, Seller (i) has relied solely upon its own investigation and the express representations and warranties of Buyer set forth in Article III hereof, (ii) has had such time as Seller deems necessary and appropriate to fully and completely review and analyze the information, documents and other materials related to Buyer that have been provided to Seller by or on behalf of Buyer or which are publicly available to Seller and (iii) has been provided an opportunity to ask questions of Buyer with respect to such information, documents and other materials and has received satisfactory answers to such questions and (b) none of Buyer or any other Person has made any representation or warranty as to Buyer or this Agreement whatsoever, express or implied, except as expressly set forth in Article III hereof.

2.21 Disclaimer of Other Representations and Warranties. Except as previously set forth in this Article II (as modified by the Schedules), neither Seller nor any related Person or Person acting on behalf of any of them make any representation or warranty, express or implied, at law or in equity, with respect to Seller or any of its assets, liabilities or operations or the transactions contemplated by this Agreement, and any such other representations or warranties are hereby expressly disclaimed.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF PARENT AND BUYER

Parent and Buyer represent and warrant to Seller (except as set forth in the applicable Schedules referenced below as well as any other section in this Agreement to which it is reasonably apparent from a reading of such Schedules without assuming any knowledge of the matters disclosed therein that such information is relevant to any other section) as follows:

3.1 Organization. Parent is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. The copies of the Certificate of Incorporation and Bylaws of Parent as most recently filed with the SEC Reports (as defined below) are true, correct, and complete copies of such documents as in effect as of the date of this Agreement. Parent is not in violation of any of the provisions of its Certificate of Incorporation and Bylaws. Buyer is a wholly-owned subsidiary of Parent and was formed solely for the purpose of entering into this Agreement and consummating the transactions contemplated hereby.

3.2 Contemplated Transactions; General Compliance.

(a) Enforceability; Authority. Each of Parent and Buyer has all requisite corporate power and authority to enter into this Agreement and the other agreements contemplated hereby to be executed and delivered by Parent or Buyer, as applicable, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Assuming due authorization, execution and delivery of this Agreement by the other Parties hereto, this Agreement constitutes a valid and binding obligation of Parent and Buyer, enforceable against Parent and Buyer in accordance with its terms, subject to the Creditor's Rights Exception. The execution, delivery and performance of this Agreement and the other agreements contemplated hereby to be executed and delivered by Parent and Buyer and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite corporate action on the part of Parent and Buyer, and no other proceedings on the part of Parent or Buyer or their respective shareholders are necessary to authorize the execution, delivery or performance of this Agreement or the other agreements contemplated hereby.

(b) No Conflict. The execution and delivery of this Agreement and the other agreements contemplated hereby, and the consummation or performance of any of the transactions contemplated hereby or thereby will not: (i) conflict with or violate any provisions of the organizational documents of Parent or Buyer; or (ii) Breach any provisions of or result in the termination, maturation or acceleration of, any rights or obligations under any Contract, Order or Law, to which Parent or Buyer is subject, to which Parent or Buyer is a party or by which any of Parent's or Buyer's properties or assets is bound, except in the case of clause (ii) where such Breach, termination, maturation or acceleration would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Parent and its Subsidiaries, taken as a

whole, or on Parent or Buyer's ability to consummate the transactions contemplated by this Agreement.

(c) Governmental Filings. No Governmental Filings are required in connection with the execution, delivery and performance of the transactions contemplated by this Agreement by Buyer, except for the consents stated in Schedule 2.2(d) and in respect of applicable requirements of the Federal Securities Laws.

3.3 Brokers' Fees. Neither Parent nor Buyer has incurred, or made commitments for, any brokerage, finders', investment bankers' or similar fee or commission in connection with the transactions contemplated by this Agreement.

3.4 Sarbanes-Oxley Act. Parent is in compliance in all material respects with applicable requirements of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and applicable rules and regulations promulgated by the SEC thereunder in effect as of the date of this Agreement.

3.5 Litigation. There is no pending or, to Parent's or Buyer's Knowledge, threatened Litigation or Order by or against Parent or Buyer (i) that challenges the transactions contemplated by this Agreement and the agreements contemplated hereby; or (ii) that seeks to enjoin or prohibit consummation of, or seeks other equitable relief with respect to, the transactions contemplated by this Agreement and the agreements contemplated hereby. No event has occurred or circumstance exists that (with or without notice or lapse of time or both) is reasonably likely to give rise to or serve as a basis for the commencement of any such Litigation or Order. There are no, and have been no, Orders against the Parent or the Buyer. There is no unsatisfied judgment or any open injunction binding upon the Parent or the Buyer that would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Parent or Buyer to enter into and perform their obligations under this Agreement or that would reasonably be expected to have a material adverse effect on Buyer and its Subsidiaries, taken as a whole.

3.6 Capitalization; Shares.

(a) As of March 31, 2021, the authorized capital stock of Parent consisted of 249,000,000 shares of common stock, par value $0.0001 per share, of which 115,387,140 were issued and outstanding.

(b) Immediately prior to the Closing, the Shares to be issued pursuant to this Agreement will be duly and validly reserved for issuance, and upon issuance will be validly issued and outstanding as fully paid and non-assessable shares in the capital of Parent and shall be free and clear of any lien, claim or encumbrance other than any such liens, claims or encumbrances contemplated by this Agreement and shall not be subject to any pre-emptive rights, rights of first offer, rights of first refusal or similar rights of any Person. The issuance of the Shares will comply in all material respects with all Laws, including state securities Laws and Federal Securities Laws.

3.7 SEC Reports; Financial Statements. Parent has timely filed or furnished, as applicable, all registration statements, prospectuses, reports, schedules, forms, statements, and

other documents (including exhibits and all other information incorporated by reference) required to be filed or furnished by it with the SEC since January 1, 2020 (collectively, as they have been amended since the time of their filing and including all exhibits thereto, the "SEC Reports"). True, correct, and complete copies of all the SEC Reports are publicly available on EDGAR. As of their respective filing dates or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of the last such amendment or superseding filing (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), each of the SEC Reports complied as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act, and the Sarbanes-Oxley Act, and the rules and regulations of the SEC thereunder applicable to such SEC Reports. None of the SEC Reports, as of their respective dates (or if amended or superseded by a filing prior to the date of this Agreement or the Closing Date, then on the date of such filing), contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. None of the SEC Reports is the subject of ongoing SEC review or outstanding SEC investigation with respect to any accounting practices of Parent and there are no outstanding or unresolved comments received from the SEC with respect to any of the SEC Reports regarding any accounting practices of Parent. The audited financial statements and unaudited interim financial statements (including, in each case, the notes and schedules thereto) included in the SEC Reports complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto and except with respect to unaudited statements as permitted by Form 10-Q of the SEC) and fairly presented (subject, in the case of the unaudited interim financial statements included therein, to normal year-end adjustments (but only if the effect of such adjustments would not, individually or in the aggregate, be material) and the absence of complete footnotes) in all material respects the financial position of Parent as of the respective dates thereof and the results of operations, changes in stockholders' equity and cash flows of Parent for the respective periods then ended. To the Knowledge of Parent, there are no SEC inquiries or investigations, other governmental inquiries or investigations, or internal investigations pending or, to the Knowledge of Parent, threatened, in each case regarding any accounting practices of Parent.

3.8 Reporting Company. Parent is a publicly-held company subject to reporting obligations pursuant to Section 13 of the Exchange Act, and the Parent Stock is registered pursuant to Section 12(b) of the Exchange Act.

3.9 Listing. The Parent Stock is listed on NASDAQ. Parent is in material compliance with all applicable NASDAQ listing and corporate governance rules.

3.10 Investment Company. Parent is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

3.11 Investigation. Each of Parent and Buyer acknowledges and agrees that it has conducted its own inquiry, independent investigation, review and analysis of Seller, the Assets and the Assumed Liabilities. Each of Parent and Buyer acknowledges and agrees that (a) in making its decision to enter this Agreement and to consummate the transactions contemplated hereby, each

of Parent and Buyer (i) has relied upon such inquiry, investigation, review and analysis and the representations and warranties of Seller set forth herein, (ii) has formed an independent judgment concerning the Business and the Assets and the transactions contemplated by this Agreement, (iii) has had such time as Buyer and Parent deem necessary and appropriate to fully and completely review and analyze the information, documents and other materials related to Seller, the Business, the Assets and the Assumed Liabilities that have been provided to Buyer by or on behalf of Seller or which are publicly available to Buyer and Parent and (iv) has been provided an opportunity to ask questions of Seller with respect to such information, documents and other materials and has received satisfactory answers to such questions, (b) except as expressly set forth in this Agreement, Buyer shall acquire the Assets and assume the Assumed Liabilities in "as is" condition and on a "where is" basis and (c) none of Seller nor any other Person has made any representation or warranty as to Seller, the Assets or the Assumed Liabilities or this Agreement whatsoever, express or implied, except as expressly set forth in Article II hereof.

3.12 Disclaimer of Other Representations and Warranties. Except as previously set forth in this Article III, Buyer makes no representation or warranty, express or implied, at law or in equity, with respect to it or any of its assets, liabilities or operations, and any such other representations or warranties are hereby expressly disclaimed.

ARTICLE IV

COVENANTS

4.1 Conduct of Business Prior to the Closing. Except as contemplated on Schedule 4.1, or with the written consent of Buyer, which may not be unreasonably withheld, conditioned or delayed, during the period from the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with its terms, Seller shall (i) conduct the Business in the ordinary course of business, (ii) use commercially reasonable efforts to preserve the Business's business organization and relationships with third parties (including lessors, licensors, suppliers, distributors and customers) and keep available the service of their present employees and service providers, and (iii) continue to obtain all necessary consents and provide required notices in connection with any Acquired Agreement to be acquired by Buyer in this Agreement. Without limiting the generality of the foregoing, and except as otherwise permitted in this Agreement or with the prior written consent of Buyer (which shall not be unreasonably withheld, conditioned or delayed), Seller shall not, during the period from the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with its terms, directly or indirectly do, or propose or commit to do, or otherwise cause to occur, any of the following with respect to any member of the Company Group:

(a) make any change in or amendment to its organizational documents;

(b) declare, set aside, make or pay any dividend or other distribution, other than distributions paid solely in cash;

(c) (i) except in the ordinary course of business, (A) enter into any Contract that, had it been entered into prior to the date of this Agreement, would be a Material Contract or an Affiliate Contract, or (B) materially amend, modify, terminate or cancel (x) any existing Material Contract or (y) any Contract that, had it been entered into or amended prior to the date of this Agreement, would be a Material Contract, (ii) fail to perform any of its material obligations under all Contracts relating to or affecting the Assets or Business, or (iii) amend, terminate or cancel any Acquired Agreement, any Acquired IP or Acquired Lease (other than the termination of any such agreement in accordance with its terms);

(d) enter into any agreement that restricts the ability of any member of the Company Group to engage or compete in any line of business, or enter into any agreement that restricts the ability of any member of the Company Group to enter a new line of business;

(e) except in the ordinary course of business, discontinue any business material to the Business or sell, lease, license, transfer or otherwise dispose or permit the cancellation, abandonment or dedication to the public domain of any of the material property rights (including Intellectual Property) or assets of the Business, other than as required pursuant to existing Contracts or commitments;

(f) acquire (by merger, consolidation, purchase, or other acquisition of equity interests or assets) any Person or any material properties or assets of any Person, except for acquisitions of properties, assets, inventory and equipment in the ordinary course of business;

(g) incur any Indebtedness, issue any debt securities, or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any Person;

(h) make any loans, advances or capital contributions to, or investments in, any other Person, or forgive, cancel or compromise any debt or claim, in each case, other than in the ordinary course of business;

(i) fail to pay its debts, Taxes and other obligations when due;

(j) except as required by applicable Law or the terms of any Company Benefit Plan as in effect on the date of this Agreement, (A) amend, terminate, enter into or adopt any Company Benefit Plan (or any arrangement that would be a Company Benefit Plan if it was in effect on the date hereof) or any collective bargaining agreement; (B) grant or increase the compensation or benefits or other pay (including base salary or hourly rate, bonus, severance, termination, commissions and incentive compensation) of any Business Employee or other individual service provider of the Business; (C) pay, grant, or increase any severance or termination pay to (or otherwise amend any such existing arrangement with) any current or former Business Employee or other individual service provider of the Business; (D) accelerate the vesting or payment of, or fund or in any other way secure the

payment, compensation or benefits under, any Company Benefit Plan or otherwise; or (E) grant any new awards, or modify the terms of any outstanding awards under any Company Benefit Plan or otherwise;

(k) hire any employee other than any hourly employee in the ordinary course of business;

(l) modify any employment arrangement with any Business Employee or terminate the employment of any Business Employee, other than (y) terminations for cause;

(m) implement or announce any group employee layoffs, plant closings, reductions in force, furloughs or temporary layoffs that would trigger notice obligations under the WARN Act;

(n) cancel, compromise or settle any material Litigation, or intentionally waive or release any material rights, with respect to the Business;

(o) make any changes to its accounting principles or practices, other than as may be required by Law or GAAP;

(p) other than in the ordinary course of business or consistent with past practices, change in any material respect the policies or practices of the Business with regard to the extension of discounts or credit to customers or collection of receivables from customers;

(q) change or revoke any Tax election or change any method of accounting for Tax purposes; in each case with respect to the Business or Assets to the extent such election or method of accounting would be binding on Buyer following the Closing Date;

(r) violate any applicable Law or Order;

(s) enter into or adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization, merger or consolidation or other reorganization; or

(t) agree, authorize, recommend, propose or announce an intention to do any of the foregoing, or enter into any contract, agreement, commitment or arrangement to do any of the foregoing.

4.2 Access to Information. Between the date of this Agreement and the earlier of the Closing and the termination of this Agreement in accordance with its terms, Seller shall (a) afford the officers, employees, accountants, counsel, financial advisors and other representatives of Buyer reasonable access during normal business hours to such of the properties, books, Contracts, commitments, records and officers of Seller and any other member of the Company Group as Buyer may reasonably request and (b) furnish Buyer and its representatives with such financial, operating and other data related to the Business as Buyer or any of its representatives may reasonably request; provided that (i) such access shall be exercised in such a manner as to not

interfere unreasonably with the conduct of the Business, (ii) the Party granting access may withhold any document (or portions thereof) or information (x) that is subject to the terms of a non-disclosure agreement with a third party, (y) that may constitute privileged attorney-client communications or attorney work product and the transfer of which, or the provision of access to which, as reasonably determined by such Party's counsel, constitutes a waiver of any such privilege or (z) if the provision of access to such document (or portion thereof) or information, as determined by such Party's counsel, would reasonably be expected to conflict with applicable Law.

4.3 SEC Matters. Seller shall, and shall cause each other member of the Company Group to, as promptly as reasonably practicable, provide Parent with all information concerning Seller and any other member of the Company Group, its respective businesses, management, operations and financial condition, in each case, that is reasonably required to be included in any form, report, schedule or other document filed by Parent with the SEC and all amendments, modifications and supplements thereto. It is the sole responsibility of Parent to interpret and determine appropriate SEC guidance as it applies to Parent and Buyer and to timely communicate requirements to Seller. Seller shall fully cooperate and make commercially reasonable efforts to timely provide any information to Parent that is required to be included within any SEC filing. Seller shall make, and shall cause each member of the Company Group to make, their Affiliates, directors, officers, managers, employees, accountants and auditors reasonably available to Parent and its counsel in connection with the drafting of any filings to be made by Parent under the Federal Securities Laws.

4.4 Indebtedness Payoff. On or prior to the Closing Date, Seller shall obtain and provide to Parent a true and correct copy of a payoff letter with respect to each of the items listed on Schedule 2.4 (collectively, the "Payoff Letters") duly executed by each borrower, creditor and other party thereunder, in customary form and providing for the termination of such Indebtedness and related documents and the termination and release of all Encumbrances securing such Indebtedness.

4.5 Satisfaction of Closing Conditions. Subject to the terms and conditions of this Agreement, (i) each Party shall use its commercially reasonable efforts to cause the conditions set forth in Article VI to be satisfied and to take or cause to be taken all actions, to do or cause to be done and to assist and cooperate with the other Parties hereto in doing all things necessary, proper or advisable under applicable Laws and regulations to consummate the transactions contemplated herein in the most expeditious manner practicable, including: (x) obtaining applicable consents, waivers or approvals of, or providing appropriate and timely notice of the transactions set forth in this Agreement to, any Third Party of the Acquired Agreements, Acquired IP, Acquired Lease and other Assets to be acquired by Buyer pursuant to this Agreement; and (y) the execution and delivery of such instruments, and the taking of such other actions as the other Parties may reasonably require in order to carry out the intent of this Agreement (including making any Governmental Filings).

4.6 Books and Records. From and after the Closing, Buyer agrees that it shall preserve and keep the records acquired or otherwise held by it or its Affiliates as of the Closing Date relating to the Business, the Assets and the Assumed Liabilities for a period of seven (7) years from the Closing Date. Thereafter, Buyer shall have the right to destroy such records.

4.7 Confidentiality.

(a) The Parties and their respective representatives shall treat all nonpublic information obtained in connection with this Agreement and the transactions contemplated hereby as confidential in accordance with the terms of the Confidentiality Agreement. The terms of the Confidentiality Agreement shall continue in full force and effect until the Closing, at which time such Confidentiality Agreement shall terminate. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement shall continue in full force and effect as provided in Section 8.2 in accordance with its terms.

(b) From and after the Closing, Seller will keep in strict confidence, and will not, directly or indirectly, except as required by Law or, if applicable, in the course of any member of Seller performing his or her duties after the Closing as a partner, officer or employee of Buyer, at any time, disclose, furnish, disseminate, make available or use any trade secrets or confidential business and technical information of the Business or Buyer, any of its Subsidiaries, affiliated or related companies, or any of their respective clients, customers or vendors, whatever its nature and form and without limitation as to when or how Seller may have acquired such information. Such confidential information includes the unique selling and servicing methods and business techniques, training, service and business manuals, promotional materials, training courses and other training and instructional materials, vendor and product information, customer and prospective customer lists, other customer and prospective customer information and other confidential business information with respect to the Business or Buyer. Such confidential information does not include any information that is or becomes publicly known other than as a result of a Breach of Seller's obligations (whether under this Agreement or otherwise) or any confidential information included in or retained by the Seller solely in connection with the Excluded Assets. Seller specifically acknowledges that all such confidential information, whether reduced to writing, maintained on any form of electronic media or maintained in the mind or memory of such Person and whether compiled by Seller, derives independent economic value from not being readily known to or ascertainable by proper means by others who can obtain economic value from its disclosure or use, that reasonable efforts have been made to maintain the secrecy of such information, that such information will be the sole property of Buyer and that any retention and use of such information by Seller (except, if applicable, in the course of any member of Seller performing his or her duties after the Closing as a partner, officer or employee of Buyer) will constitute a misappropriation of Buyer's trade secrets and a Breach of this Agreement. In the event that Seller or its representatives becomes legally compelled to disclose any information referred to in this Section 4.7(a), Seller shall provide Buyer with prompt written notice before such disclosure, to the extent legally permitted, sufficient to enable Buyer either to seek a protective order, at Buyer's expense, or another appropriate remedy preventing or prohibiting such disclosure.

4.8 Non-Competition; Non-Solicitation; Non-Disparagement.

(a) For a period of three (3) years commencing on the Closing Date, neither Seller nor any Owner shall, directly or indirectly, (i) engage in or assist others in engaging in any Competitive Activity in the Territory except on behalf of Buyer or (ii) take any action with the intent of interfering in any material respect with the business relationships (whether formed before or after

the date of this Agreement) between Buyer and processing companies, businesses and Third Parties that have been introduced to processing companies by Seller, any Owner or Buyer (or by other parties on behalf of Seller, any Owner or Buyer), or customers and suppliers of Buyer (including, for the avoidance of doubt, with respect to the Business and the Assets). For purposes of this Section 4.8(a), "Territory" means North America.

(b) For a period of three (3) years commencing on the Closing Date, neither Seller nor any Owner shall, directly or indirectly, hire, solicit or induce, or attempt to hire, solicit or induce, any employee of Buyer or its Subsidiaries or encourage any such employee to leave or reduce such employment or hire any such employee who has left such employment (including, for the avoidance of doubt, employees of the Business); provided that nothing in this Section 4.8(b) shall prevent Seller or any Owner from soliciting or hiring (x) any employee whose employment has been terminated by Buyer or its Subsidiaries without cause; or (y) after 120 calendar days from the date of termination of employment, any employee whose employment has been terminated by the employee. Nothing in this Section 4.8(b) shall prevent Seller or any Owner from hiring any employee who responds to a general advertisement or solicitation for employment, including but not limited to advertisements or solicitations through newspapers, trade publications, periodicals, radio or internet database.

(c) For a period of three (3) years commencing on the Closing Date, neither Seller nor any Owner shall, directly or indirectly, solicit, call on or entice, or attempt to solicit, call on or entice, any processing companies, contracting parties that have been introduced to processing companies by Seller, any Owner or Buyer (or by other parties on behalf of Seller, any Owner or Buyer), customers, suppliers or other Third Parties that have conducted business with Buyer or its Subsidiaries (including, for the avoidance of doubt, any contracting parties, processing companies or Third Parties that have been introduced to processing companies that constitute a part of the Assets or the Business), in each case for purposes of diverting business or services from Buyer or its Subsidiaries; provided however this clause (c) shall not prohibit the Seller or any Owner from soliciting or hiring any person who responds to a general advertisement or solicitation, including but not limited to advertisements or solicitations through newspapers, trade publications, periodicals, radio or internet database.

(d) Seller and each Owner acknowledges that a Breach or threatened Breach of this Section 4.8 may give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a Breach or a threatened Breach by Seller or any Owner of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such Breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(e) Seller, each Owner and Buyer agree and intend that Seller's and each Owner's obligations under this Section 4.8 be tolled during any period that Seller or any Owner is in Breach of any of the obligations under this Section 4.8, so that Buyer is provided with the full benefit of the restrictive periods set forth herein.

(f) For a period of three (3) years commencing on the Closing Date, Seller and each Owner will refrain from, in any manner, directly or indirectly, all conduct, oral or otherwise, that disparages or damages or could reasonably be expected to disparage or damage the reputation, goodwill, or standing in the community of the Buyer, its Subsidiaries, the Business or the Assets. It shall not however be a breach of this Subsection to testify truthfully in any judicial, administrative or arbitration proceeding or to make statements or allegations in legal filings, depositions or responses to interrogatories that are based on reasonable belief and are not made in bad faith. Notwithstanding anything herein to the contrary, nothing in this paragraph shall prevent Buyer or Parent from exercising its authority or enforcing its rights or remedies hereunder or that Buyer or Parent may otherwise be entitled to enforce or assert under any other agreement or applicable Law, or limit such rights or remedies in any way.

(g) For a period of three (3) years commencing on the Closing Date, Buyer and Parent will refrain from, in any manner, directly or indirectly, all conduct, oral or otherwise, that disparages or damages or could reasonably be expected to disparage or damage the reputation, goodwill, or standing in the community of Seller and each Owner. It shall not however be a breach of this Subsection to testify truthfully in any judicial, administrative or arbitration proceeding or to make statements or allegations in legal filings, depositions or responses to interrogatories that are based on reasonable belief and are not made in bad faith. Notwithstanding anything herein to the contrary, nothing in this paragraph shall prevent Seller or an Owner from exercising its authority or enforcing its rights or remedies hereunder or that Seller or an Owner may otherwise be entitled to enforce or assert under any other agreement or applicable Law, or limit such rights or remedies in any way.

(h) Seller and each Owner acknowledges that the restrictions contained in this Section 4.8 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 4.8 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this Section 4.8 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

4.9 Further Assurances. The Parties shall cooperate reasonably with the other Parties hereto and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information, (b) execute and deliver to each other such other documents, and (c) do such other acts and things, all as any other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the transactions contemplated hereby.

4.10 Transfer Taxes**.** All Transfer Taxes shall be paid when due and shall be borne 50% by Seller and 50% by Buyer. Buyer shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Seller shall reasonably cooperate with respect thereto), and the non-filing party shall cooperate with the filing party in filing such Tax Returns.

4.11 Apportioned Obligations. All real or personal property and similar ad valorem Taxes for a taxable period that includes the Closing Date ("Apportioned Obligations"), shall be apportioned between the portion of such taxable period ending on the day before the Closing Date (the "Pre-Closing Tax Period") and the portion beginning on the Closing Date (the "Post-Closing Tax Period") on a per diem basis. Seller shall be liable for any such Apportioned Obligations apportioned to the Pre-Closing Tax Period and Buyer shall be liable for any such Apportioned Obligations apportioned to the Post-Closing Tax Period.

4.12 Cooperation as to Tax Matters. Buyer and Seller shall reasonably cooperate, and shall cause their respective Affiliates, officers, employees, agents, auditors and other representatives to reasonably cooperate, at the requesting party's expense with respect to reasonable out of pocket expenses, in preparing and filing all Tax Returns and in resolving all disputes and audits with respect to all taxable periods relating to Taxes for taxable periods ending on or before the Closing Date or beginning on or before the Closing Date, including by retaining, maintaining and making available to each other all records to the extent reasonably necessary in connection with Taxes and making employees reasonably available on a mutually convenient basis to provide additional information or explanation or to testify at proceedings relating to Taxes.

4.13 No Parent Stock Transactions. From and after the date of this Agreement until the Closing, neither Seller nor any other member of the Company Group nor any of their Affiliates, directly or indirectly, shall engage in any transactions involving the securities of Parent. Seller shall use commercially reasonable efforts to require each of its Affiliates and representatives to comply with the foregoing sentence.

4.14 Audit. Seller shall cooperate with Parent (at Parent's expense) in the event that Parent needs to obtain an audit of the Company Group or Seller for any period ending prior to Closing; provided that the Parent shall make available any Transferred Employees necessary to assist Seller in connection therewith.

4.15 Change of Name or Liquidation. Unless otherwise agreed to by Buyer, (i) Seller shall (or shall cause the relevant members of the Company Group to) change their respective name(s) to a name that does not include "Flow", "Cape Cod", "ProMerchant" or any other permutation thereof, and that is otherwise not a name that may suggest an affiliation of any kind with the Business or Assets or (ii) Seller shall conduct no business under such name(s) other than to wind down and liquidate such members of the Company Group or to discharge its obligations under this Agreement in connection with its indemnification provisions.

4.16 Updated Schedules Delivery. The Parties shall confer and may reasonably agree to updated Schedules, which would amend and replace the Schedules to this Agreement in their entirety, within five (5) Business Days after the date hereof; provided, however, that such updated Schedules shall not cause any change in or addition to any schedule, except for the disclosure

schedules setting forth any and all exceptions or supplemental information to the representations and warranties in Article II unless Buyer consents to such changes or additions in writing.

ARTICLE V

EMPLOYEES AND EMPLOYEE BENEFIT PLANS

5.1 Employee Matters.

(a) Effective as of the Closing Date, Buyer shall offer, or cause its applicable Affiliate to offer, at-will employment to each Business Employee. Each Business Employee who accepts Buyer's or its Affiliate's offer of employment pursuant to this Section 5.1 shall be referred to herein as a "Transferred Employee".

(b) Following the Closing, Seller and its Affiliates shall retain and be responsible for (and shall indemnify and hold the Buyer from and against) (i) any and all Liabilities, whenever arising or occurring, under the Company Benefit Plans (other than any Standalone Plan), (ii) any and all Liabilities relating to the employment, compensation and employee benefits of the Transferred Employees which arise or are incurred prior to the Closing and (iii) any and all Liabilities relating to any Seller employee who is not a Transferred Employee, whenever arising or occurring. Except as set forth in the immediately preceding sentence, Buyer shall be solely responsible for all Liabilities related to the Transferred Employees that relate exclusively to periods after the Closing Date.

(c) This Section 5.1 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 5.1, expressed or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 5.1. Without limiting the foregoing, no provision of this Section 5.1 will (i) be treated as an amendment to any particular Company Benefit Plan, (ii) prevent Buyer from amending or terminating any of its benefit plans in accordance their terms, (iii) prevent Buyer or its Affiliates, on or after the Closing Date, from terminating the employment of any Transferred Employee, or (iv) confer any rights or remedies (including third-party beneficiary rights) on any current or former director, Business Employee, employee, or individual service provider of Seller, Buyer or any of their respective Affiliates or any beneficiary or dependent thereof or any other Person.

ARTICLE VI

CLOSING CONDITIONS

6.1 Conditions to Obligations of Parent and Buyer. Except as may be waived in writing by Parent and Buyer, the obligations of Parent and Buyer to consummate the transactions

contemplated by this Agreement are subject to the satisfaction or waiver by Buyer of the following conditions at or prior to the Closing:

(a) Governmental Orders. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Law which is in effect and has the effect of making the transactions contemplated by this Agreement unlawful or otherwise restraining or prohibiting consummation of such transactions.

(b) Representations and Warranties. The representations and warranties of Seller contained in Article II shall be true and correct as of the date hereof and as of the Closing Date, as though made on and as of the Closing Date, except (i) that representations and warranties that are made as of a specific date need be true and correct only as of such date and (ii) for breaches and inaccuracies of representations and warranties of Seller other than the Fundamental Representations, the effect of which would not, individually or in the aggregate, result in a Material Adverse Effect.

(c) Covenants. Seller shall have performed and complied with in all material respects all covenants and agreements hereunder required to be performed or complied with by them on or prior to the Closing Date.

(d) Closing Certificate. Seller shall have delivered to Buyer a certificate, executed by an officer of Seller certifying to the satisfaction of the conditions specified in Section 6.1(b) above.

(e) No Material Adverse Effect. Since the date of this Agreement, no Material Adverse Effect shall have occurred and be continuing.

(f) Payoff Letters. Seller shall have delivered or caused to be delivered to Buyer the Payoff Letters providing for the matters set forth in Section 1.10(a)(x).

(g) Key Employees. Each of the Key Employees shall have executed standard employee at-will onboarding documentation, satisfactory to Buyer.

(h) Consents. Seller shall have delivered to Buyer evidence of the consents, assignments, compliance with notices regarding rights of first refusals or similar rights, and other items set forth on Schedule 1.10(a)(vii), in each case, in form and substance reasonably satisfactory to Buyer.

(i) FIRPTA Certificate/IRS Form W-9. Seller shall have delivered to Buyer a certificate pursuant to Treasury Regulations Section 1.1445-2(b) evidencing that Seller is not a foreign person within the meaning of Section 1445 and Section 1446 of the Code, and true and correct copy of Seller's IRS Form W-9.

(j) Due Diligence. Buyer shall be satisfied in its sole discretion with its due diligence review of the Seller, each member of the Company Group, the Business, the Assets, and the Assumed Liabilities.

(k) NASDAQ Approval. Buyer shall have received the NASDAQ Approval.

(l) Other Closings. The closing of the transactions contemplated by the Other Asset Purchase Agreements shall have occurred (or shall occur concurrently with the Closing).

(m) Approval of Secured and Unsecured Creditor of Buyer's Two Credit Facilities. Buyer shall have obtained the consent (or waiver) of Luxor Capital Group, L.P. to close the Agreement as well as to close the Other Asset Purchase Agreements, if Buyer determines that such consent (or waiver) is required.

(n) Board of Director Approval. Parent's Board of Directors shall have approved, in its sole discretion, the closing of the Agreement as well as the closing of the Other Asset Purchase Agreements.

6.2 Conditions to Obligations of Seller. Except as may be waived in writing by Seller, the obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Seller of the following conditions at or prior to the Closing:

(a) Governmental Orders. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Law which is in effect and has the effect of making the transactions contemplated by this Agreement unlawful or otherwise restraining or prohibiting consummation of such transactions.

(b) Representations and Warranties. The representations and warranties of Parent and Buyer contained in Article IV shall be true and correct as of the date hereof and as of the Closing Date, as though made on and as of the Closing Date, except (i) that representations and warranties that are made on and as of a specific date need be true and correct only as of such date and (ii) for breaches and inaccuracies that would not prevent or materially impair or delay consummation by Buyer of the transactions contemplated hereby.

(c) Covenants. Each of Parent and Buyer shall have performed and complied with in all material respects all covenants and agreements hereunder required to be performed or complied with by it on or prior to the Closing Date.

(d) Closing Certificate. Each of Parent and Buyer shall have delivered to Seller a certificate, executed by an officer of Parent or Buyer (as applicable), certifying to the satisfaction of the conditions specified in Section 6.2(b) above.

ARTICLE VII

INDEMNIFICATION

7.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and remain in full force and effect until the Holdback Release Date; provided that the Fundamental Representations shall survive until the date that is four (4) years from the Closing Date. All covenants and agreements of the Parties contained herein which are to be performed prior to the Closing shall terminate at the Closing, except that the covenants and agreements set forth in Section 4.1, shall survive the Closing and remain in full force and effect until the Holdback Release Date. All other covenants and agreements shall survive for the duration of their terms. Notwithstanding anything to the contrary in this Agreement, including Section 7.4, any claim for Fraud may be brought within the applicable statute of limitations and nothing herein shall limit or reduce the amounts recoverable for any such claim. If a Claim Notice has been given by an Indemnified Party to an Indemnifying Party within the applicable limitation period provided for in this Section 7.1, the end of the survival period that would otherwise apply to such claim shall be extended (solely with respect to the claim underlying such Claim Notice) until such later date as such claim has been fully and finally resolved.

7.2 Indemnification by Seller. From and after the Closing, subject to the terms and conditions of this Article VII, Seller shall indemnify and defend Buyer, its Affiliates and its representatives (collectively, the "Buyer Indemnified Parties") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, Buyer Indemnified Parties based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or Breach of any of the representations or warranties of Seller contained in this Agreement (except for representations and warranties made as of a specific date, the inaccuracy or Breach of which will be determined with reference to such date);

(b) any Breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement; and

(c) the Excluded Liabilities.

7.3 Indemnification by Buyer. From and after the Closing, subject to the terms and conditions of this Article VII, Parent and Buyer shall jointly and severally indemnify and defend Seller, the Owners, their Affiliates and their representatives (collectively, the "Seller Indemnified Parties") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnified Parties based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or Breach of any of the representations or warranties of Parent or Buyer contained in this Agreement as of the Closing Date (except for representations and warranties made as of a specific date, the inaccuracy or Breach of which will be determined with reference to such date);

(b) any Breach or non-fulfillment of any covenant, agreement or obligation to be performed by Parent or Buyer pursuant to this Agreement; and

(c) the Assumed Liabilities.

7.4 Limitation on Indemnification. The party making a claim under this Article VII is referred to as the "Indemnified Party" and the party against whom such claims are asserted under this Article VII is referred to as the "Indemnifying Party." The indemnification provided for in Section 7.2 and Section 7.3 hereof shall be subject to the following limitations:

(a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification under Section 7.2(a) or Section 7.3(a), as the case may be, until the aggregate amount of all Losses suffered in respect of indemnification under Section 7.2(a) or Section 7.3(a) exceeds $75,000 (the "Deductible"), in which event the Indemnifying Party shall be liable for all such Losses in excess of the Deductible.

(b) The aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 7.2(a) or Section 7.3(a), as the case may be, shall not exceed the sum of (x) the Indemnity Escrow Holdback Amount plus (y) the aggregate Market Value of the Indemnity Holdback Shares (the "Cap").

(c) Notwithstanding the foregoing, the limitations set forth in Sections 7.4(a) and (b) above shall not apply to Losses arising out of or resulting from any Breach of the Fundamental Representations; provided that in no event shall the aggregate liability of Seller for all Losses arising under this Agreement exceed the Purchase Price actually received by Seller.

(d) For purposes of this Article VII, calculations of the amount of any Losses arising out of or resulting from any inaccuracy, Breach or non-fulfillment shall be made without regard to any reference to "Material Adverse Effect," "materiality" or any other correlative materiality qualifications.

(e) The amount of any and all Losses under this Article VII shall exclude exemplary, punitive, special, consequential and indirect damages, loss of income or revenue, loss of anticipated or future business or profits, loss of reputation, opportunity cost, diminution in value and Losses based on any type of multiplier (including "multiple of EBITDA," "multiple of profits" or "multiple of cash flow") or other similar valuation methodology, except to the extent actually awarded to a Third Party in an Action brought against an Indemnified Party.

(f) The amount of Losses recoverable from an Indemnifying Party hereunder shall be calculated net of the amount of any insurance proceeds, indemnification payments or reimbursements actually received by the Indemnified Party from Third Parties in respect of such Losses.

7.5 Notice of Claims.

(a) Any Indemnified Party shall, within the limitation period provided for in Section 7.1, give, in the case of indemnification sought by: (i) any Seller Indemnified Party, to Buyer; or (ii) any Buyer Indemnified Party, to Seller, a written notice (a "Claim Notice") that

includes a general description of the facts giving rise to the claim for indemnification hereunder that is the subject of the Claim Notice (if and to the extent then known), a good faith estimate of the amount of such claim and a reference to the provision of this Agreement upon which such claim is based along with disclosure of any policy of insurance which may afford coverage for all or part of such claim. A Claim Notice shall be given promptly following the claimant's determination that facts or events give rise to a claim for indemnification hereunder; provided that the failure to give such written notice (i) shall not relieve any Indemnifying Party of its obligations under this Article VII, except to the extent it shall have been actually and materially prejudiced by such failure, and (ii) shall not relieve any Indemnifying Party of any other obligation or liability it may have to any Indemnified Party otherwise than under this Article VII.

(b) An Indemnifying Party shall have sixty (60) days after the receipt of any proper Claim Notice pursuant hereto to: (i) agree to the amount set forth in the Claim Notice (the "Indemnification Amount") and to pay or cause to be paid such amount to such Indemnified Party (A) in the case of a claim by the Seller Indemnified Parties, by wire transfer in immediately available funds, or (B) in the case of a claim by the Buyer Indemnified Parties, (1) by the Buyer and Seller jointly directing the Escrow Agent to release from the Indemnity Escrow Holdback Amount an amount equal to eighty percent (80%) of the Indemnification Amount, and (2) by Seller transferring back to Parent or a nominee thereof (for no consideration) from the Indemnity Holdback Shares the number of shares of Parent Stock equal to (x) twenty percent (20%) of the Indemnification Amount divided by (y) the Market Value as of the date of the Claim Notice; or (ii) provide such Indemnified Party with written notice that it disagrees with the claim set forth in the Claim Notice (the "Dispute Notice"). For a period of sixty (60) days after the giving of any Dispute Notice, a representative of the Indemnifying Party and the Indemnified Party shall negotiate in good faith to resolve the matter. In the event that the controversy is not resolved within sixty (60) days after the date the Dispute Notice is given, the Parties may thereupon proceed to pursue any and all available remedies at law. If the Indemnifying Party agrees to the Claim Notice pursuant to clause (i) above or fails to provide a timely Dispute Notice pursuant to clause (ii) above, then: (x) if the Indemnified Party is a Buyer Indemnified Party, Buyer shall be entitled to the indemnification payment released by the Escrow Agent as contemplated by Section 7.5(b)(i)(B), or (y) if the Indemnified Party is a Seller Indemnified Party, then Buyer shall, using its own immediately available funds, pay Seller the amount set forth in the Claim Notice.

7.6 Third Party Claims.

(a) If a claim by a third Person (including any audit, notice or request for information from a Tax Regulatory Authority) (a "Third Party Claim") is made against an Indemnified Party, and if such Indemnified Party intends to seek indemnity with respect thereto under this Article VII, such Indemnified Party shall promptly notify: (i) Buyer, in the case of indemnification sought by any Seller Indemnified Party; or (ii) Seller, in the case of indemnification sought by any Buyer Indemnified Party, in writing of such claims (a "Third Party Claim Notice"). The Third Party Claim Notice shall include a general description of the facts giving rise to the claim for indemnification hereunder that is the subject of the Third Party Claim Notice, (if and to the extent then known) the amount or an estimate of the amount of such claim and all material documentation relevant to the claim described in the Third Party Claim Notice. A Third Party Claim Notice shall be given promptly following the claimant's determination that facts or events give rise to a claim

for indemnification hereunder; provided that in respect of any Action at law or suit in equity by or against a third Person as to which indemnification will be sought shall be given promptly after the Action or suit is commenced; and provided, further, that the failure to give such written notice (i) shall not relieve any Indemnifying Party of its obligations under this Article VII, except to the extent it shall have been actually and materially prejudiced by such failure, and (ii) shall not relieve any Indemnifying Party of any other obligation or liability it may have to any Indemnified Party otherwise than under this Article VII.

(b) The Indemnifying Party may at any time deliver written notice to the Indemnified Party that it intends to undertake, conduct and control, through counsel of its own choosing of recognized standing and competence and at its own expense, the settlement or defense thereof, and the Indemnified Party shall cooperate with it in connection therewith; provided that the Indemnifying Party shall only be entitled to undertake, conduct and control such settlement or defense if it acknowledges, in writing, to the Indemnified Party its obligation to fully indemnify the Indemnified Party hereunder against any Losses that may result from such Third Party Claim (subject to, if applicable pursuant to Section 7.4, the Cap and Deductible). If the Indemnifying Party undertakes to conduct and control the settlement or defense of a Third Party Claim, it shall take all steps reasonably necessary in the settlement or defense of such Third Party Claim, and shall diligently pursue the resolution of such Third Party Claim. Should an Indemnifying Party elect to assume the defense of a Third Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party elects to assume the defense of a Third Party Claim, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood, however, that the Indemnifying Party shall control the defense. If the Indemnifying Party does not notify the Indemnified Party in writing that it elects to undertake the defense thereof, the Indemnified Party shall have the right to undertake the defense or prosecution of the claim through counsel of its own choice, and the reasonable fees and expenses incurred in connection with such defense or prosecution shall be considered Losses hereunder with respect to the subject matter of such claim, indemnifiable to the extent provided in this Article VII. Notwithstanding the foregoing, the Indemnifying Party shall be entitled to assume the settlement or defense of a Third Party Claim under this Section 7.6(b) only if: (A) the Third Party Claim involves solely monetary damages and (B) to the extent that the Cap applies, the potential Losses relating to such Third Party Claim are less than the Cap.

(c) On the first Business Day following the Holdback Release Date, (i) Buyer and Seller shall jointly instruct the Escrow Agent to release to Seller in accordance with the Escrow Agreement the remaining amount of the Indemnity Escrow Holdback Amount net of the amount of any unresolved or pending claims properly asserted by Buyer prior to the Holdback Release Date ("Unresolved Claims"), in cash, by wire transfer of immediately available funds to the account designated in writing by Seller, and (ii) the remaining number of Indemnity Holdback Shares, net of the number of Indemnity Holdback Shares corresponding to the amount by which the Unresolved Claims exceeds the available balance of the Indemnity Escrow Holdback Amount, shall be released from the Indemnity Holdback Restriction. Buyer or Parent shall cause the record ownership of the released Indemnity Holdback Shares to be in the name of the Seller or in the names and percentage allocations of such other Persons as Seller may request via written notice to

Buyer and Parent on a date that is no less than five (5) Business Days prior to the Holdback Release Date, all of whom shall be members of the Seller; provided, that, Buyer, Parent and Seller agree that if Indemnity Holdback Shares are released directly to the members of Seller, each of the parties hereto shall treat each such issuance of shares for all Tax reporting purposes as a transfer to Seller, followed by a transfer by Seller to its members. Thereafter, any remaining Indemnity Escrow Holdback Amount retained by the Escrow Agent and any remaining Indemnity Holdback Shares that continue to be subject to the Indemnity Holdback Restriction with respect to the Unresolved Claims (if any), shall be released by the Escrow Agent or from the Indemnity Holdback Restriction, as applicable, upon resolution of such Unresolved Claims.

(d) Neither Buyer nor Seller shall settle or consent to the entry of judgment of any Third Party Claim without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, withheld or delayed, unless such settlement or judgment (i) does not provide for injunctive or other equitable relief and (ii) will be fully satisfied by the Indemnifying Party.

7.7 Tax Treatment. All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

7.8 No Double Recovery. In no event shall the Indemnified Party be entitled under this Agreement to the recovery of the same Loss more than once, regardless of whether the claim for the Loss may be brought under multiple provisions of this Agreement. No amount may be recovered as a Loss with respect to any particular matter to the extent such amount with respect to such matter was expressly listed on the Closing Statement (as finally determined pursuant to Section 1.9(b)) or specifically taken into account as part of the Purchase Price adjustments under Sections 1.9(b) or 1.9(c).

7.9 Exclusive Remedy. Subject to Section 9.12, the Parties acknowledge, covenant and agree that, from and after the Closing, their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein, shall be pursuant to the indemnification provisions set forth in this Article VII. Nothing in this Section 7.9 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled pursuant to Section 9.12. Notwithstanding anything to the contrary in this Agreement, nothing will prohibit, limit or in any way restrict claims or remedies for Fraud in connection with any breach of any representation, warranty, covenant, agreement or obligation set forth herein (or in any exhibit or schedule hereto or in the Schedules) or otherwise relating to the subject matter of this Agreement.

ARTICLE VIII

TERMINATION

8.1 Termination. This Agreement may be terminated as follows:

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

(b) by either Buyer or Seller if the Closing shall not have occurred on or before September 15, 2021 (the "Outside Date"); provided that the right to terminate this Agreement under this paragraph shall not be available to any Party whose failure to fulfill or comply with any obligation or covenant under this Agreement or contemplated hereby has been the principal cause of, or resulted in, the failure of the Closing to occur on or prior to such date;

(c) by Buyer, in the event that a (i) Material Adverse Effect shall have occurred prior to Closing or (ii) it determines that Closing condition 6.1(j) or 6.1(k) will not be satisfied prior to Closing;

(d) by Buyer, if a breach of this Agreement by Seller results or would result in any of the conditions set forth in Section 6.1(b) not being satisfied and such breach cannot be cured or, if curable, remains uncured within the earlier of (i) 15 days after Seller has received written notice from Buyer of the occurrence of such breach and (ii) the Outside Date; provided that Buyer may not terminate pursuant to this Section 8.1(d) if Seller's breach has been primarily caused by a breach of any provision of this Agreement by Buyer;

(e) by Seller, if a breach of this Agreement by Buyer results or would result in any of the conditions set forth in Section 6.2(b) not being satisfied and such breach cannot be cured or, if curable, remains uncured within the earlier of (i) 15 days after Buyer has received written notice from Seller of the occurrence of such breach and (ii) the Outside Date; provided that Seller may not terminate pursuant to this Section 8.1(e) if the Buyer's breach has been primarily caused by a breach of any provision of this Agreement by Seller; or

(f) either Buyer or Seller, if any Governmental Authority shall have issued an Order or enacted a Law enjoining or otherwise prohibiting the Closing and such Order or Law shall have become final and nonappealable; provided that the right to terminate this Agreement under this paragraph shall not be available to any Party whose failure to fulfill or comply with any obligation or covenant under this Agreement has been the cause of, or resulted in, the issuance of such nonappealable Order or Law.

8.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 8.1, written notice thereof shall be promptly delivered by the Party seeking termination to the other Parties and such termination shall be immediately effective upon the delivery of such notice by a Party entitled to effect such termination. Upon any such valid termination, (a) each Party will redeliver to the other Parties all documents, work papers and other materials of the other Parties relating to the transactions contemplated hereby, whether obtained before or after the execution of this Agreement, (b) this Agreement shall become void and no Party shall have any further rights, Liabilities or obligations hereunder except with respect to those obligations set forth in the Confidentiality Agreement and Sections 4.7(a), 8.2 and Article IX hereof, which shall survive any such termination, and (c) termination shall not relieve any Party from liability for

Fraud or any intentional or willful breaches of this Agreement prior to the date of such termination. An "intentional or willful breach" means a breach or failure to perform, in each case, that is the consequence of an act or omission by a Party with the actual knowledge that the taking of such act or failure to take such act would, or would reasonably be expected to, cause a Breach of this Agreement.

ARTICLE IX

GENERAL PROVISIONS

9.1 Benefit and Assignment. This Agreement may not be assigned in whole or in part by Parent, Buyer or Seller without the prior written consent of the other Parties, whether by merger, operation of law, or otherwise and any purported assignment without such consent shall be void; provided that Buyer may assign any or all of its rights hereunder to one of more of its Affiliates upon written notice of the same to Seller, which assignment shall not relieve Buyer of any of its obligations hereunder. This Agreement shall be binding upon and inure to the sole benefit of the Parties hereto and their respective successors and permitted assigns and is not intended, nor shall be construed, to give any Person, other than the Parties hereto and their respective successors and permitted assigns, any legal or equitable right, remedy or claim hereunder, and other than the rights of the Indemnified Parties pursuant to Article VII.

9.2 Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Delaware, and without reference to any rules of construction regarding the Party responsible for the drafting hereof. Each Party (a) agrees that any suit, Action or other legal proceeding arising out of this Agreement shall be brought before any federal or state court located in the State of Delaware having subject matter jurisdiction in the event any dispute arises out of this Agreement, (b) consents to the exclusive jurisdiction of any such court in any such suit, Action or proceeding (c) agrees that service of process or notice in any such suit, Action or proceeding shall be effective if delivered in compliance with Section 9.5 hereof, and (d) waives any objection which such Party may have to the laying of venue, personal jurisdiction, *forum nonconveniens* and improper service of process (provided such service of process is in accordance with Section 9.5) of any such suit, Action or proceeding in any such court.

9.3 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE AGREEMENTS CONTEMPLATED HEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, TO THE FULLEST EXTENT PERMITTED BY LAW, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION (INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS) ARISING OUT OF OR

RELATING TO THIS AGREEMENT, THE OTHER AGREEMENTS CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND KNOWINGLY WITH ITS, HIS OR HER, AS THE CASE MAY BE, LEGAL COUNSEL, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.3. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

9.4 Expenses. Except as otherwise provided herein, Seller shall be responsible for and shall pay all costs, liabilities and other obligations incurred by it and, up to and including the Closing, the Business in connection with preparing, negotiating and entering into this Agreement and the performance of and compliance with all transactions, agreements and conditions contained in this Agreement to be performed or complied with by it and, up to and including the Closing, the Business, including legal, accounting and financial advisory and investment banking fees incurred by Seller or, up to and including the Closing, the Business, and each of Parent and Buyer shall be responsible for and shall pay all costs, liabilities and other obligations incurred by it in connection with preparing, negotiating and entering into this Agreement and the performance of and compliance with all transactions, agreements and conditions contained in this Agreement to be performed or complied with by it, including its legal, accounting and financial advisory and investment banking fees incurred by Parent or Buyer, and all costs, liabilities and other obligations first incurred by the Business after Closing in connection with the performance of and compliance with all transactions, agreements and conditions contained in this Agreement to be performed or complied with by the Business after Closing. For the avoidance of doubt, any provider of legal, accounting, financial advisory or investment banking services or any other provider of professional services of Seller or the Business up to and including the Closing Date may continue to provide services to Seller following the Closing solely at Seller's expense. Notwithstanding the above, in the event the Closing doesn't occur as the result of the failure to satisfy the conditions set forth in Section 6.1(j), Section 6.1(j), or Section 6.1(j), Buyer shall be responsible for 50% of Seller's legal fees incurred in connection with the negotiation of this Agreement up to $30,000.

9.5 Notices. Any and all notices, demands, and communications provided for herein or made hereunder shall be given in writing and shall be delivered personally, by overnight delivery service, by facsimile, by email or sent by certified, registered or express air mail, postage prepaid and shall be deemed given to a Party (i) when actually delivered to such Party, if delivered by hand, (ii) one Business Day after deposited with an overnight delivery service, if delivered by overnight delivery, (iii) upon electronic confirmation of receipt, when facsimile transmitted to

such Party to the facsimile number indicated for such Party below (or to such other facsimile number for a Party as such Party may have substituted by notice pursuant to this section) during normal business hours, (iv) if sent by email, upon effectiveness of another delivery method hereunder or (v) five days after mailing if mailed to such Party by registered or certified U.S. Mail (return receipt requested) and addressed to such Party at the address designated below for such Party (or to such other address for such Party as such Party may have substituted by notice pursuant to this section):

(a) If to Seller:

Michael P.J. Gerstein, Esq.
In care of: Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210
Email: michael@flowpayments.com; garie@foleyhoag.com
Attn: Gil Arie

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

Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210
Email: garie@foleyhoag.com; erice@foleyhoag.com
Attn: Gil Arie & Erica Rice

(b) If to Parent or Buyer:

Waitr Holdings, Inc.
214 Jefferson St., Suite 200
Lafayette, LA 70501
Email: Thomas.pritchard@waitrapp.com
Attn: Thomas C. Pritchard

Cape Payments, LLC
214 Jefferson St., Suite 200
Lafayette, LA 70501
Email: Thomas.pritchard@waitrapp.com
Attn: Thomas C. Pritchard

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

Goodwin Procter LLP
601 Marshall St.
Redwood City, CA
Email: DJohanson@goodwinlaw.com
Attn: David E. Johanson

9.6 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all Parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, portable document format or other electronic format complying with the U.S federal ESIGN Act of 2000 (such as DocuSign) shall be effective as delivery of a manually executed counterpart to this Agreement.

9.7 Computation of Time. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday, or any date on which banks in New York City, New York are authorized to be closed, the Party having such privilege or duty may exercise such privilege or discharge such duty on the next succeeding day which is a regular Business Day.

9.8 Amendment, Modification and Waiver. This Agreement may not be modified, amended or supplemented except by mutual written agreement of Parent, Buyer and Seller. Any Party may waive in writing any term or condition contained in this Agreement and intended to be for its benefit; provided that no waiver by any Party, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term or condition.

9.9 Entire Agreement. This Agreement, the agreements contemplated hereby, and the appendices, exhibits and schedules delivered herewith, and the Confidentiality Agreement represent the full and complete agreement of the Parties with respect to the subject matter hereof and supersede and replace any prior understandings and agreements among the Parties with respect to the subject matter hereof.

9.10 Publicity. None of the Parties shall and, each Party shall cause its Affiliates not to, make or issue any public announcement or press release to the general public with respect to this Agreement or the transactions contemplated by this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that no such consent or prior notice shall be required in connection with any public announcement or press release the content of which is consistent with that of any prior or contemporaneous public announcement or press release by any Party in compliance with this Section 9.10. Nothing in this Section 9.10 shall limit any Party from making any announcements, statements or acknowledgments that such Party is required by applicable Law or the requirements of NASDAQ to make, issue or release (including in connection with the exercise of the fiduciary duties of the board of directors of Parent or with NASDAQ in connection with satisfying the condition set forth in Section 6.1(k)); provided, that, to the extent practicable, the Party making such announcement, statement or acknowledgment shall provide such announcement, statement or acknowledgment to the other Parties prior to release and consider in good faith any comments from such other Parties.

9.11 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. If it is ever held by any Governmental Authority of competent jurisdiction that

any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, such restriction shall be enforced to the maximum extent permitted by Law and, to the extent necessary, the Parties hereto will amend or otherwise modify this Agreement to replace any provision contained herein that is held invalid or unenforceable with a valid and enforceable provision giving effect to the original intent of the Parties.

9.12 Specific Performance. The Parties agree that irreparable damage for which monetary damages, even if available, may not be an adequate remedy, may occur in the event that any Party does not perform its obligations under the provisions of this Agreement (including failing to take such actions as are required of them) or otherwise Breaches this Agreement. The Parties acknowledge and agree that (a) the Parties shall be entitled to an injunction, specific performance, or other equitable relief, to prevent Breaches of this Agreement and to enforce specifically the terms and provisions hereof, without proof of damages, prior to the valid termination of this Agreement in accordance with Section 8.1, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific enforcement is an integral part of the transactions contemplated by this Agreement and without that right, none of Parent, Buyer or Seller would have entered into this Agreement. Each Party agrees that it shall not oppose the granting of specific performance and other equitable relief on the basis that the other Parties have an adequate remedy at Law or that an award of specific performance is not an appropriate remedy for any reason at Law or equity. The Parties acknowledge and agree that any Party seeking an injunction to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section shall not be required to provide any bond or other security in connection with any such injunction.

9.13 Interpretation.

(a) References to “dollars” or “$” are to U.S. dollars.

(b) This Agreement was prepared jointly by the Parties hereto and no rule that it be construed against the drafter will have any application in its construction or interpretation.

(c) Whenever the words “ordinary course of business” are used in this Agreement, they shall be deemed to be followed by the words “consistent with past practice.”

(d) Unless otherwise indicated to the contrary herein by the context or use thereof: (i) the words, “herein,” “hereto,” “hereof,” “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof; (ii) the word “including” means “including, but not limited to”; (iii) masculine gender shall also include the feminine and neutral genders, and vice versa; (iv) words importing the singular shall also include the plural, and vice versa; (v) the word “or” is disjunctive but not necessarily exclusive; and (vi) accounting terms which are not otherwise defined in this Agreement shall have the meanings given to them under the Accounting Principles.

(e) Unless the context of this Agreement otherwise requires, references to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be

construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(f) Whenever reference is made to a "partner" or "member" that is an entity, each such term shall be deemed to include the ultimate holders of such entity.

(g) The word "day" means calendar day unless Business Day is expressly specified.

9.14 Headings. The headings contained in this Agreement are inserted for convenience only and shall not be considered in interpreting or construing any of the provisions contained in this Agreement.

9.15 Owner Guarantee. To induce Buyer to enter into this Agreement, each Owner hereby absolutely, unconditionally and irrevocably guarantees to Buyer the due, complete and punctual payment observance, performance and discharge of the payment obligations of Seller pursuant to this Agreement, including under Article VII (the "Obligations"). Buyer may, in its sole discretion, bring and prosecute a separate Action against the Owners for the full amount of the Obligations, regardless of whether any Action is brought against Seller, or whether Seller is joined in any such action. Buyer shall not be obligated to file any Action in relation to the Obligations in the event that Seller becomes subject to an insolvency, bankruptcy, reorganization or similar proceeding, and the failure of Buyer to so file shall not affect the Owners' obligations hereunder. In the event that any payment in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, the Owners shall remain liable hereunder with respect to the Obligations as if such payment had not been made. This Section 9.15 is an unconditional guarantee of payment and not of collection. Each Owner agrees that Buyer may at any time and from time to time, without notice to or further consent of any Owner, extend the time of payment of any Obligation, and may also enter into any agreement with Seller or any other Person interested in the transactions contemplated by this Agreement for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, without in any way impairing or affecting the Owners' obligations under this Section 9.15. Each Owner agrees that the Obligations hereunder shall not be released or discharged, in whole or in part, or otherwise affected by: (i) the failure or delay of Buyer to assert any claim or demand or to enforce any right or remedy against the Owners or Seller or any other Person interested in the transactions contemplated by this Agreement; (ii) any change in the time, place or manner of payment of the Obligations; (iii) the addition, substitution or release of any Person now or hereafter liable with respect to the Obligations, to or from this Section 9.15, this Agreement, or any related agreement or document; (iv) any change in the corporate existence, structure or ownership of Seller or any other Person now or hereafter interested in the transactions contemplated by this Agreement; (v) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Seller or any other Person now or hereafter interested in the transactions contemplated by this Agreement; (vi) the existence of any claim, set-off or other right which Seller or any Owner may have at any time against Buyer, whether in connection with any Obligation or otherwise; or (vii) the adequacy of any other means Buyer may have of obtaining payment of the Obligations. Notwithstanding anything to the contrary contained in this Section 9.15, the parties hereto hereby agree that, to the extent Seller is relieved of any of its obligations under this Agreement, the Owners shall be similarly relieved of its corresponding Obligations under this Section 9.15 solely in respect of such

relieved obligations. The obligations of the Owners under this Section 9.15 shall be several, and not joint and several, in accordance with each Owner's Pro-Rata Share.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date set forth in the first paragraph hereof.

SELLER:
ProMerchant LLC

By: /s/ Michael Gerstein, Manager

By: /s/ Drew Sharma, Manager

OWNERS:

_____

Jabalah, LLC

By: /s/ Michael Gerstein, Manager

PMSB Holdings, LLC

By: /s/ Drew Sharma, Manager

PARENT:
Waitr Holdings, Inc.

By: /s/ Leo Bogdanov
Name: Leo Bogdanov
Title: Chief Financial Officer

BUYER:
Cape Payments, LLC

By: /s/ Leo Bogdanov
Name: Leo Bogdanov
Title: Chief Financial Officer

The following terms, as used in this Agreement, shall have the following meanings:

"Accounting Principles" means the accounting principles, practices and methodologies set forth in Exhibit A.

"Acquired Agreements" has the meaning set forth in Section 1.1(a).

"Acquired IP" has the meaning set forth in Section 1.1(b).

"Acquired Leases" has the meaning set forth in Section 1.1(c).

"Acquired Seller Assets" has the meaning set forth in Section 1.1(d).

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, audit, notice of violation, proceeding, Litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"Active Agreement" means any Contract wherein Seller, or any member of the Company Group, has received any compensation related to such agreement, or paid any compensation related to such agreement, within the six (6) month period immediately preceding the Closing Date.

"Adjustment Holdback Amount" means $70,000.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Affiliate Contract" has the meaning set forth in Section 2.17.

"Aggregate Consideration" has the meaning set forth in Section 1.14.

"Agreement" has the meaning set forth in the Preamble.

"Ancillary Agreements" means, collectively, (i) the Bills of Sale, (ii) the Assignment and Assumption Agreements, (iii) the Escrow Agreement, and (iv) the Indemnity Holdback Share Pledge.

"Anti-Bribery Laws" has the meaning set forth in Section 2.18(a).

"Anti-Money Laundering Laws" means laws, regulations, rules or guidelines relating to money laundering, including, without limitation, financial recordkeeping, reporting requirements and anti-money laundering program requirements, which apply to the Business, such as, without

limitation, the Bank Secrecy Act of 1970, as amended, and the implementing regulations of the U.S. Treasury Department's Financial Crimes Enforcement Network, the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, the U.S. Currency and Foreign Transaction Reporting Act of 1970, as amended, the U.S. Money Laundering Control Act of 1986, as amended, the Annunzio-Wylie Anti-Money Laundering Act of 1992, as amended and all money laundering-related laws of other jurisdictions where Seller or any of its Subsidiaries conduct business or own assets, and any related or similar law issued, administered or enforced by any Governmental Authority.

"Apportioned Obligations" has the meaning set forth in Section 4.11.

"Assets" has the meaning set forth in Section 1.1.

"Assignment and Assumption Agreements" means, collectively, the Agreements Assignment and Assumption Agreement, the IP Assignment and Assumption Agreement, the Lease Assignment and Assumption Agreement, and the Other Assumed Liabilities Assignment and Assumption Agreement.

"Assumed Liabilities" has the meaning set forth in Section 1.3.

"Base Cash Consideration" has the meaning set forth in Section 1.6(a).

"Benefit Plan" means all material "employee benefit plans," as defined in Section 3(3) of ERISA, whether or not subject to ERISA (collectively, "Benefit Plans"), including each Contract, plan, program, practice, arrangement, collective bargaining agreement, or other arrangement (whether written or unwritten) providing for severance, salary continuation, equity or equity-based compensation, profits interest, stock options or stock-purchase, bonus, profit-sharing, incentive or deferred compensation, retention, change in control, vacation or other paid-time-off, disability, health or welfare benefits, sick pay, perquisite or fringe benefits, employment or consulting, pension, retirement or supplemental retirement benefits or other compensation or employee benefits or remuneration of any kind., in each case, which the Company Group or any ERISA Affiliate sponsors, maintains or contributes to, or provides benefits under or for which any potential Liability or obligation is borne, by a member of the Company Group or any ERISA Affiliate and which covers or provides benefits under or through such plan, program or arrangement to any Business Employee or former employee of the Business (or their eligible dependents), (collectively, the "Company Benefit Plans").

"Bills of Sale" has the meaning set forth in Section 1.10(a)(i).

"Books and Records" means the books, records, manuals and other materials (in any form), including financial and accounting records, records maintained at the headquarters of the Business, advertising, catalogues, sales and promotional materials, price lists, correspondence, customer, mailing and distribution lists, referral sources, photographs, production data, purchasing materials and records, personnel records, research and development files, records, data and laboratory books,

service and warranty records, equipment logs, operating guides and manuals, sales order files and litigation files.

"Breach" means any breach of, default (or an event which, with notice or lapse of time or both, would constitute a default) under or failure to perform or comply with, any covenant, provision, term or other obligation or right.

"Business" means payment processing operations pre-Closing.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized by Law to close.

"Business Employee" means each employee of Seller or any of its Affiliates who wholly or primarily provides services to the Business and whose name is set forth on Schedule 2.14(a), as it may be updated from time to time in accordance with this Agreement.

"Business Registered Intellectual Property" has the meaning set forth in Section 2.9(a).

"Buyer" has the meaning set forth in the Preamble.

"Buyer Indemnified Parties" has the meaning set forth in Section 7.2.

"Calculation Time" means 11:59 p.m. on the day prior to the Closing Date.

"Cap" has the meaning set forth in Section 7.4(b).

"Cash" means the sum of the fair market value (expressed in United States dollars) of all cash and cash equivalents of any kind (including without limitation marketable securities and short term investments), excluding restricted cash, determined in accordance with the Accounting Principles. Cash shall be calculated net of issued but uncleared checks and drafts and include checks and drafts deposited for the account of Seller, including deposits in transit.

"Cash Consideration" has the meaning set forth in Section 1.6(a).

"Claim Notice" has the meaning set forth in Section 7.5.

"Closing" has the meaning set forth in Section 1.8.

"Closing Balance Sheet" means the unaudited consolidated balance sheet of the Business as of the Calculation Time, reflecting the Assets and the Assumed Liabilities, prepared in accordance with the Business's past accounting practices and the Accounting Principles.

"Closing Cash" means the aggregate amount of Cash held by Seller and any other member of the Company Group or otherwise included in the Assets.

"Closing Cash Payment" shall have the meaning set forth in Section 1.7(a).

"Closing Date" has the meaning set forth in Section 1.8.

"Closing VWAP" means the average VWAP of Parent Stock (rounded to the nearest one-hundredth of one cent) for the five (5) consecutive trading days ending the day prior to the Closing Date.

"Closing Working Capital" means (i) current assets included in the Assets minus (ii) current liabilities included in the Assumed Liabilities, each as of the Calculation Time, as calculated and defined in accordance with the Accounting Principles and the illustrative calculation of Closing Working Capital set forth in Exhibit B.

"Closing Working Capital Deficiency Amount" means, if the Closing Working Capital is less than the Target Closing Working Capital, (i) the Target Closing Working Capital minus (ii) the Closing Working Capital.

"Closing Working Capital Excess Amount" means, if the Closing Working Capital is greater than the Target Closing Working Capital, (i) the Closing Working Capital minus (ii) the Target Closing Working Capital.

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

"Company Data" has the meaning set forth in Section 2.9(i).

"Company Group" means Seller and its Subsidiaries (if any), collectively, but excluding Flow Payments LLC.

"Company IT Systems" means all information technology and computer systems (including computer software, information technology and telecommunication hardware and other hardware and equipment) used for or relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information whether or not in electronic format, that are owned, leased or licensed by the Company Group or provided as a service to the Company Group and used in the Business in each case to the extent controlled by the Company Group, including all of the foregoing that are used by the Company to make Intellectual Property Assets available to customers.

"Competitive Activity" means, either individually or in partnership, jointly or in conjunction with any other Person, firm, association, syndicate, trust, franchise, company or corporation, whether as owner, partner, officer, director, investor, shareholder, beneficiary, franchisee, licensee, employee, consultant, agent, lender or in any manner whatsoever, engaging in, carrying on or be otherwise concerned with, employed by, associated with, or have any interest in, managing, advising, lending money to, guaranteeing the debts or obligations of, rendering services or advice to, in whole or in part, any Person that conducts a business that is competitive with the Business as currently conducted; provided, however a Competitive Activity shall not preclude any Person from participating as a stockholder, member, or investor in a business entity through the ownership of not more than a five percent (5%) passive interest in a public or private company.

"Confidentiality Agreement" means that certain Confidentiality Agreement by and between Waitr Holdings Inc. and Flow Payments LLC, Cape Cod Merchant Services LLC, and ProMerchant LLC, dated as of January 19, 2021, as amended.

"Contaminants" has the meaning set forth in Section 2.9(k).

"Contracts" means, with respect to any Person, any written or oral contracts, agreements, leases, indentures, insurance policies, commitments, settlements, or other obligations, including all amendments and modifications thereto, to which such Person is a party or by which such Person is bound or to which any of such Person's assets or properties is subject.

"Creditor's Rights Exception" has the meaning set forth in Schedule 2.2(a).

"Deductible" has the meaning set forth in Section 7.4(a).

"Dispute Notice" has the meaning set forth in Section 7.5(b).

"Employees" means current or former employees employed (or formerly employed) in the operation of the Business.

"Encumbrances" means, any encumbrance, charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, deed of trust, hypothecation, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, conditional sale or restriction on transfer of title, including any restriction on use, voting (in the case of any security or equity interest), receipt of income or exercise of any other attribute of ownership, whether imposed by agreement, Law, equity or otherwise.

"Environmental Law" means any law, code, license, permit, authorization, approval, consent, common law, legal doctrine, requirement or agreement with any Governmental Authority relating to (i) the protection, preservation or restoration of the environment (including air, water, vapor, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, or (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of hazardous substances.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended

"ERISA Affiliate" means all Persons (whether or not incorporated) that are or would have ever been treated with Seller as a "single employer" within the meaning of Section 4001(b) of ERISA or Section 414 of the Code.

"Escrow Agent" means Bank of America, or such other similar financial institution agreed to by the Buyer and the Seller.

"Escrow Agreement" means the escrow agreement to be entered into at Closing with the Escrow Agent in a form mutually agreed by and among Buyer, Seller and the Escrow Agent.

"Estimated Cash Consideration" has the meaning set forth in Section 1.9(a).

"Estimated Closing Balance Sheet" has the meaning set forth in Section 1.9(a).

"Estimated Closing Cash" has the meaning set forth in Section 1.9(a).

"Estimated Closing Statement" has the meaning set forth in Section 1.9(a).

"Estimated Closing Working Capital" has the meaning set forth in Section 1.9(a).

"Estimated Closing Working Capital Deficiency Amount" has the meaning set forth in Section 1.9(a).

"Estimated Working Capital Excess Amount" has the meaning set forth in Section 1.9(a).

"Estimated Working Capital Deficiency Amount" has the meaning set forth in Section 1.9(a).

"Estimated Working Capital Excess Amount" has the meaning set forth in Section 1.9(a).

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

"Excluded Assets" has the meaning set forth in Section 1.2.

"Excluded Liabilities" has the meaning set forth in Section 1.4.

"Federal Securities Laws" means the Exchange Act, the Securities Act and the rules and regulations promulgated thereunder

"Final Closing Statement" has the meaning set forth in Section 1.9(b).

"Financial Statements" means (i) the unaudited consolidated financial statements (including balance sheets and income statements) of the Seller for the fiscal year ended December 31, 2020, and (ii) the unaudited consolidated financial statements (including balance sheets and income statements) of the Seller for the six-month period ended June 30, 2021.

"Fraud" with respect to any Person shall mean actual and intentional common law fraud.

"Fundamental Representations" means the representations and warranties of Seller set forth in Section 2.1 (Organization and Qualification), Section 2.2 (Contemplated Transactions General Compliance), Section 2.8(a) (Title to Assets, etc.), Section 2.15 (Taxes), and Section 2.19 (Brokers' Fees).

"GAAP" means United States generally accepted accounting principles, as in effect at the date of preparation of any relevant statement, document or analysis.

"Governmental Authority" means the government of the United States or any foreign jurisdiction, any state, county, municipality or other governmental or quasi-governmental unit, or any agency, board, bureau, instrumentality, department or commission (including any court or other tribunal) of any of the foregoing, any arbitrator or arbitral body or any self-regulatory authority with similar powers.

"Governmental Filings" has the meaning set forth in Section 2.2(d).

"Holdback Release Date" means the date that is twelve (12) months from the Closing Date.

"Inbound Licenses" has the meaning set forth in Section 2.9(c).

"Indebtedness" means, without duplication and with respect to any member of the Company Group, all (a) indebtedness for borrowed money, including drawings under lines of credit, provided by any member, officer, employee or Third Party, (b) obligations for the deferred purchase price of property or services, including earnout and contingent payments, (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments, (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement, (e) capital lease obligations, (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions, (g) all defined benefit pension, multiemployer pension, post-retirement health and welfare benefit, accrued annual or other bonus obligations, any unpaid severance liabilities currently being paid or payable in respect of employees and service providers of the Company or any of its Subsidiaries who terminated employment or whose services to the Company or any of its Subsidiaries have ceased (as applicable) prior to the Closing and deferred compensation liabilities of the Company or any of its Subsidiaries, together, in each case, with any associated employer payroll taxes (h) guarantees made by a member of the Company Group on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (g), and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (h).

"Indemnification Amount" has the meaning set forth in Section 7.5(b).

"Indemnified Party" has the meaning set forth in Section 7.4.

"Indemnifying Party" has the meaning set forth in Section 7.4.

"Indemnity Escrow Holdback Amount" means the amount that is eighty percent (80%) of the Indemnity Holdback Amount.

"Indemnity Holdback Amount" means $249,900.

"Indemnity Holdback Restriction" has the meaning set forth in Section 1.9(c)(iii).

"Indemnity Holdback Shares" means the number of shares of Parent Stock determined by dividing (x) twenty percent (20%) of the Indemnity Holdback Amount by (y) the Closing VWAP.

"Indemnity Holdback Share Pledge" has the meaning set forth in Section 1.9(c)(iii).

"Independent Accounting Firm" has the meaning set forth in Section 1.11.

"Insurance Policies" has the meaning set forth in Section 2.16(a).

"Intellectual Property Assets" means all Intellectual Property relating to or used in connection with the Business' operations (including rights and remedies in respect of past, present and future infringements thereof) that is either (a) owned by Seller or a member of the Company Group or (b) used by Seller or a member of the Company Group in operating the Business.

"Intellectual Property" means all intellectual property rights arising anywhere in the world in or under: registered and unregistered trademarks and applications for registration of same, service marks, trade names, logos, slogans, trade dress, URLs, domain names and other indicators of source (and all goodwill associated with any of the foregoing); copyrights, copyright registrations and applications for copyright registration, including any copyrights arising in computer software or corollary database rights, and mask work rights; patents, patent applications (including reissues, divisions, continuations, continuations in part and extensions); inventions, invention disclosures, trade secrets, formulae, processes, methodologies, know-how and any other intellectual property or proprietary rights.

"IP Assignment and Assumption Agreements" has the meaning set forth in Section 1.10.

"IT Infrastructure" has the meaning set forth in Section 2.9(h).

"Key Employees" means each of the employees listed on Schedule 1-E hereto.

"Knowledge" means, (a) when applied to Buyer, the actual knowledge of Carl Grimstad, Thomas Pritchard or Leo Bogdanov, and (b) when applied to Seller, the actual knowledge of Michael Gerstein, Drew Sharma, Kevin Murphy.

"Latest Balance Sheet" means the unaudited consolidated balance sheet of Seller as of June 30, 2021.

"Latest Balance Sheet Date" means June 30, 2021.

"Laws" means, collectively, all federal, state, local, municipal, foreign or international (including multi-national) constitutions, laws, statutes, ordinances, rules, regulations, codes, order, treaties or principles of common law, judgment or decree or other pronouncement of any Governmental Authority.

"Lease" has the meaning set forth in Section 2.8(c).

"Lease Assignment and Assumption Agreement" has the meaning set forth in Section 1.10.

"Leased Property" has the meaning set forth in Section 2.8(c).

"Liabilities" or, individually, "Liability" means, with respect to any Person, any debt liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested executory, determined, and whether or not the same is required to be accrued on the financial statements of such Person.

"Litigation" means any claim, action, arbitration, audit, hearing, investigation, litigation, appeal, suit, or other proceeding (whether civil, criminal, administrative, judicial, or investigative, whether formal or informal, whether public or private) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"Losses" means all losses, claims, damages, settlements, judgments, awards, fines, fees (including reasonable attorneys' fees), charges, liabilities, penalties, Taxes and costs and expenses (including reasonable costs of investigation, remediation or other response actions) of any nature.

"Market Value" means, as of any date, the VWAP for the five consecutive trading days ending on the trading day immediately prior to such date.

"Material Adverse Effect" means any effect, change, event, result, occurrence, state of facts, circumstance or development that, individually or in the aggregate has had or could reasonably be expected to have a material adverse effect on the Business, Assets, Assumed Liabilities, operations or results of operations of the Business or condition (financial or otherwise) of the Business taken as a whole; provided that none of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect under this definition: any adverse change, event, development or effect arising from or relating to (i) general business, political or economic conditions affecting the industry in which the Business operates, (ii) acts of war, sabotage, military actions armed hostilities or terrorism, (iii) changes in financial, banking or securities markets, (iv) any changes in Laws or GAAP or the enforcement or interpretation thereof, (v) any change relating to the identity of, or facts and circumstances relating to, Buyer and including any actions by customers, suppliers or personnel, (vi) any action taken by Buyer and any of its Affiliates, agents or representatives expressly required by this Agreement, (vii) act of God including any pandemic, hurricane, flood, tornado, earthquake or other natural disaster or any other force majeure event, (viii) any failure to meet internal or published projections, estimates or forecasts of revenues, earnings, or other measures of financial or operating performance for any period (provided that the underlying causes of such failures shall not be excluded) or (ix) the taking of any action required to be taken by this Agreement, except in the case of the foregoing clauses (i) through (iv) to the extent such change, event, development or effect has a disproportionate adverse impact on the Business in a disproportionately adverse manner relative to other companies in the industries and markets in which the Business operates.

"Material Contracts" has the meaning set forth in Section 2.7(a).

"NASDAQ" means The Nasdaq Stock Market LLC.

"NASDAQ Approval" means that NASDAQ has confirmed or acknowledged to the sole satisfaction of Buyer, that the closing of this Agreement and the Other Asset Purchase Agreements will not violate or conflict with the continued listing requirements or corporate governance policies of NASDAQ to maintain the listing of Parent common stock or otherwise jeopardize the continued listing of the Parent common stock.

"Non-Indemnity Holdback Shares" means the Shares other than the Indemnity Holdback Shares.

"Objection Notice" has the meaning set forth in Section 1.9(b).

"Open Source Software" means any software (in source or object code form) that is subject to (i) a license or other agreement commonly referred to as an open source, free software, copyleft or community source code license (including but not limited to any code or library licensed under the GNU Affero General Public License, GNU General Public License, GNU Lesser General Public License, BSD License, Apache Software License, or any other public source code license arrangement) or (ii) any other license or other agreement that requires, as a condition of the use, modification or distribution of software subject to such license or agreement, that such software or other software linked with, called by, combined or distributed with such software be (a) disclosed, distributed, made available, offered, licensed or delivered in source code form, (b) licensed for the purpose of making derivative works, or (c) redistributable at no charge, including without limitation any license defined as an open source license by the Open Source Initiative as set forth on www.opensource.org.

"Order(s)" means all decisions, injunctions, writs, guidelines, orders, arbitrations, awards, judgments, subpoenas, verdicts or decrees entered, issued, made or rendered by any Governmental Authority.

"Other Asset Purchase Agreements" means the asset purchase agreements with respect to Flow Payments, LLC and Cape Cod Merchant Services LLC.

"Other Assumed Liabilities Assignment and Assumption Agreement" has the meaning set forth in Section 1.10.

"Outbound Licenses" has the meaning set forth in Section 2.9(c).

"Outside Date" has the meaning set forth in Section 8.1(b).

"Owner" means each of Jabalah, LLC and PMSB Holdings, LLC.

"Parent" has the meaning set forth in the Preamble.

"Parent Stock" has the meaning set forth in Section 1.6(b).

"Party" and "Parties" have the meaning set forth in the Preamble.

"Payoff Amount" has the meaning set forth in Section 1.7(b).

"Payoff Letters" has the meaning set forth in Section 4.4.

"Permits" means, collectively, governmental, regulatory and administrative permits, approvals, certifications, authorizations, licenses, franchises, orders, registrations, and accreditations.

"Permitted Encumbrances" means (a) Encumbrances for Taxes not yet due and payable, (b) mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business, (c) Encumbrances arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the Business, or (d) non-exclusive licenses granted in the ordinary course of business.

"Person" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Personal Information" means all information concerning an identified or identifiable natural person.

"Post-Closing Tax Period" has the meaning set forth in Section 4.11.

"Pre-Closing Tax Period" has the meaning set forth in Section 4.11.

"Privacy Commitments" has the meaning set forth in Section 2.9(i).

"Pro-Rata Share" means 50% with respect to Jabalah, LLC, 50% with respect to PMSB Holdings, LLC.

"Purchase Price" has the meaning set forth in Section 1.6.

"Sale Event" has the meaning set forth in Section **Error! Reference source not found.**.

"Schedules" means the disclosure schedules delivered by (i) Seller to Buyer no later than five (5) Business Days after the date hereof setting forth any and all exceptions or supplemental information to the representations and warranties contained in Article II and containing certain other disclosure as referenced throughout this Agreement and (ii) Buyer to Seller on the date hereof setting forth any and all exceptions or supplemental information to the representations and warranties contained in Article III and containing certain other disclosure as referenced throughout this Agreement.

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

"SEC Reports" has the meaning set forth in Section 3.7.

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

"Seller" has the meaning set forth in the Preamble.

"Seller Indemnified Parties" has the meaning set forth in Section 7.3.

"Seller Member Approval" means the consent of all of the holders of the membership interests of the Seller under the Seller Operating Agreement to approve and adopt, as the case may be, this Agreement, the Ancillary Agreements and the other transactions contemplated hereby, in each case, in accordance with the Seller Operating Agreement, and which shall include a waiver in accordance with applicable Law by such holders of any appraisal, dissenters' or similar rights that may be available to such holders in connection with this Agreement, the Ancillary Agreement and/or the other transactions contemplated hereby.

"Seller Operating Agreement" means Seller's Operating Agreement as in effect at the time of Closing.

"Shares" shall have the meaning set forth in Section 1.6(b).

"Standalone Plan" means any Benefit Plan that is sponsored, maintained or contributed to or required to be contributed to solely by one or more of the members of the Company Group and in which solely Business Employees are participants.

"Subsidiaries" means each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing at least 50% of the outstanding voting stock or other equity interests.

"Target Closing Working Capital" means $70,000.

"Tax" means any income, gross receipts, license, payroll, employment, franchise, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, duties, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax of any kind whatsoever (and any interest, penalty, addition or additional amount thereon) imposed, assessed or collected by or under the authority of any Governmental Authority and any liability for the payment of any of the foregoing as a successor, transferee or otherwise.

"Tax Return" means any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority (including any supplement or attachment thereto and any amendment thereof) in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Laws relating to any Tax.

"Territory" has the meaning set forth in Section 4.8(a).

"Third Party" means a Person that is not a party to this Agreement.

"Third Party Claim" has the meaning set forth in Section 7.6(a).

"Third Party Claim Notice" has the meaning set forth in Section 7.6(a).

"Transaction Expenses" means any investment banking, accounting, attorney, other professional fees or other expenses incurred by Seller or any other member of the Company Group in connection with the negotiation, preparation, execution, delivery and consummation of this Agreement or any other agreement contemplated hereby and the transactions contemplated hereby and thereby.

"Transfer Taxes" means any sales, use, stock transfer, real property transfer, real property gains, transfer, stamp, registration, documentary, recording or similar duties or Taxes (together with any interest thereon, penalties, fines, costs, fees, additions to Tax or additional amounts with respect thereto) incurred in connection with the transactions contemplated by this Agreement.

"Transferred Employee" has the meaning set forth in Section 5.1(a).

"Unresolved Claims" has the meaning set forth in Section 7.6(c).

"VWAP" means, for any trading day, the volume weighted average price per share of Parent Stock on the NASDAQ (as reported by Bloomberg L.P. or, its successor, or, if not available, by another authoritative source mutually agreed by Buyer and Seller) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day.

"WARN Act" means the U.S. Worker Adjustment and Retraining Notification Act, and any other similar applicable Law.

Exhibit 10.5

AMENDMENT NO. 1 TO
EXECUTIVE EMPLOYMENT AGREEMENT

This amendment (the "Amendment") amends the executive employment agreement dated as of April 23, 2021 ("Agreement"), by and between Waitr Holdings Inc., a Delaware corporation (the "Company") and Leo Bogdanov ("Executive"), and is effective the 23rd day of August, 2021 ("Effective Date").

WHEREAS, the Company and Executive desire to amend the Agreement to reflect increased compensation as detailed herein;

NOW, THEREFORE, in consideration of the above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendment of Section 4.1. Section 4.1 of the Agreement is hereby amended to add the following sentence:

> Commencing on the Effective Date, the Base Salary shall increase to $320,000 per year.

2. Amendments to Section 5. The second sentence of the introductory paragraph of Section 5 is amended and restated as set forth below:

> Except as set forth in 5.7 below, upon the Termination Date, Executive shall not be entitled to any additional compensation and benefits from the Company or any of its affiliates post-Termination Date (as defined below).

A new section 5.7 is added to the Agreement as follows:

> 5.7 Termination Within 12 months of Effective Date. Notwithstanding anything to the contrary in Section 5, in the event that the Termination Date occurs within 12 months from the Effective Date, the Company will pay Executive, within 15 days of the Termination Date, an amount equal to $100,000 less 31.25% of the Base Salary paid to Executive since the Effective Date.

3. No Other Amendments. Except as set forth in Sections 1 and 2 of this Amendment, the Agreement shall remain in full force and effect as currently in effect and, by execution of this Amendment, each party re-affirms the provisions and terms of the employment relationship set forth in the Agreement (as amended by this Amendment).

4. Severability. Should any one or more of the provisions of this Amendment be determined to be illegal or unenforceable, all other provisions of this Amendment shall be given effect separately from the provision or provisions determined to be illegal or unenforceable and shall not be effected thereby.

5. Counterparts. This Amendment may be executed in multiple counterparts with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

6. Entire Agreement. This Amendment and the Agreement constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof.

7. Defined Terms. Defined terms used in this Amendment shall have the meaning ascribed to them herein or in the Agreement.

IN WITNESS WHEREOF, each of the parties hereto has executed this Amendment or has caused this Amendment to be executed on its behalf by a representative duly authorized, all as of the Effective Date.

Waitr Holdings, Inc.

By: /s/ Carl Grimstad
Carl Grimstad, Chief Executive Officer

Executive

/s/ Leo Bogdanov
Leo Bogdanov

Exhibit 10.6

Executive Employment Agreement

This Employment Agreement (the "**Agreement**") is made and entered into this 2nd day of September 2021 ("**Effective Date**"), with services and performance obligations to commence on September 22, 2021 (the "**Start Date**") by and between Armen Yeghyazarians ("**Executive**") and Waitr Holdings Inc., a corporation organized under the laws of the State of Delaware (the "**Company**").

WHEREAS, the Company desires to employ Executive on the terms and conditions set forth herein; and

WHEREAS, Executive desires to be employed by the Company on such terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. At-Will Employment Basis. Executive's at-will employment hereunder shall commence as of the Start Date and shall continue on an at-will basis until such time as Executive's employment with the Company terminates pursuant to Section 5 of this Agreement (such period is hereinafter referred to as the "**Employment Term**").

2. Position and Duties.

2.1 Position. During the Employment Term, Executive shall serve as the Chief Accounting Officer of the Company, reporting to the chief executive officer, or at the chief executive officer's option, the chief financial officer or Board of Directors of the Company (the "**Board**"). In such position, Executive shall have such duties, authority, and responsibilities as shall be determined from time to time by the chief executive officer (or the person or Board to which he reports), which duties, authority, and responsibilities are consistent with Executive's position. Executive shall, if requested, also serve as a member of the Board or as an officer or director of any affiliate of the Company for no additional compensation.

2.2 Duties. During the Employment Term, Executive shall devote substantially all of his business time and attention to the performance of Executive's duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the chief executive officer. Notwithstanding the foregoing, Executive will be permitted to (a) with the prior written consent of the chief executive officer, act or serve as a director, trustee, committee member, or principal of any type of business, civic, or charitable organization as long as such activities are disclosed in writing to the chief executive officer, and (b) purchase or own membership interest or shares in any publicly traded securities of any corporation; provided that, such ownership represents a passive investment and that Executive is not a controlling person of, or a member of a group that controls, such company or publicly traded corporation; provided further that, the activities described in clauses (a) and (b) do not (i) result in any breach of Executive's obligations under Section 7 or Section 8, (ii) interfere with the performance of Executive's duties and

responsibilities to the Company as provided hereunder, including, but not limited to, the obligations set forth in Section 2 hereof, or (iii) conflict or compete in any way with the business of the Company or any of its subsidiaries or affiliates.

3. Place of Performance. The Executive shall work remotely; provided that, Executive will be required to travel on Company business during the Employment Term as reasonably requested.

4. Compensation.

4.1 Base Salary. During the Employment Term, the Company shall pay Executive an annual rate of base salary of $250,000 in periodic installments, less applicable deductions and withholdings, in accordance with the Company's customary payroll practices and applicable wage payment laws, but no less frequently than monthly. Executive's annual base salary, as in effect from time to time, is hereinafter referred to as "**Base Salary**". The parties acknowledge and agree that a portion of Executive's Base Salary shall constitute consideration for Executive's compliance with the restrictions and covenants set forth in Section 8 of this Agreement.

4.2 Bonus. Executive shall be eligible to receive a bonus, in the sole discretion of the Board.

4.3 Equity Award. On or as soon as practicable following the Effective Date, Executive shall receive an award of 100,000 restricted stock units ("**RSU Award**") under the Waitr Holdings Inc. 2018 Omnibus Incentive Plan (the "**Incentive Plan**"), each restricted stock unit representing the right, subject to terms and conditions of the Incentive Plan and RSU Award to one share of Company common stock if and when the underlying RSU Award vests. The RSU Award will vest in three (3) equal installments as follows, subject to Executive's continued employment through each applicable vesting date: (i) 33,333 RSU's will vest on the first anniversary date of this Agreement; (ii) 33,333 RSU's will vest on the second anniversary date of this Agreement; and (iii) 33,333 RSU's will vest on the third anniversary date of this Agreement. The RSU Award will vest in full upon a Change in Control (as defined in the Incentive Plan), subject to Executive's continued employment through the closing of such Change in Control. The RSU Award shall be subject to the terms and conditions of the Incentive Plan and become effective upon entry into a written award agreement by and between the Company and Executive. All other terms and conditions applicable to the Award shall be determined by the Board.

4.4 Fringe Benefits and Perquisites. During the Employment Term, Executive shall be entitled to fringe benefits and perquisites consistent with the practices of the Company and governing benefit plan requirements (including plan eligibility provisions), and to the extent the Company provides similar benefits or perquisites (or both) to similarly situated executives of the Company.

4.5 Employee Benefits. During the Employment Term, Executive shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the Company, as in effect from time to time (collectively, "**Employee Benefit Plans**"), to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans. The Company reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plan and applicable law.

4.6 Vacation; Paid Time-Off. Executive shall receive vacation and other paid time- off in accordance with the Company's policies for executive officers as such policies may exist from time to time.

4.7 Business Expenses. Executive shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by Executive in connection with the performance of Executive's duties hereunder in accordance with the Company's expense reimbursement policies and procedures.

4.8 Indemnification. In the event that Executive is made a party or threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (a "**Proceeding**"), other than any Proceeding initiated by Executive or the Company related to any contest or dispute between Executive and the Company or any of its affiliates with respect to this Agreement or Executive's employment hereunder, by reason of the fact that Executive is or was a director or officer of the Company, or any affiliate of the Company, or is or was serving at the request of the Company as a director, officer, member, employee, or agent of another corporation or a partnership, joint venture, trust, or other enterprise, Executive shall be indemnified and held harmless by the Company to the maximum extent permitted under applicable law and the Company's bylaws from and against any liabilities, costs, claims, and expenses, including all costs and expenses incurred in defense of any Proceeding (including attorneys' fees).

4.9 Clawback Provisions. Notwithstanding any other provisions in this Agreement to the contrary, any incentive-based compensation, or any other compensation, paid to Executive pursuant to this Agreement or any other agreement or arrangement with the Company which is subject to recovery under any law, government regulation, or stock exchange listing requirement, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation, or stock exchange listing requirement (or any policy adopted by the Company pursuant to any such law, government regulation or stock exchange listing requirement).

5. Termination of Employment. The Employment Term and Executive's at-will employment hereunder may be terminated by either the Company or Executive at any time and for any reason. Upon termination of Executive's employment during the Employment Term, Executive shall not be entitled to any additional compensation and benefits from the Company or any of its affiliates post-Termination Date (as defined below).

5.1 Termination by the Company or Executive.

(a) Executive's employment hereunder may be terminated by either the Company or the Executive, for any or no reason. Upon termination, Executive shall be entitled to receive:

(i) any accrued but unpaid Base Salary through the Termination Date which shall be paid on the pay date immediately following the Termination Date in accordance with the Company's customary payroll procedures;

(ii) reimbursement for unreimbursed business expenses properly incurred by Executive through the Termination Date, which shall be subject to and paid in accordance with the Company's expense reimbursement policy (the amounts described in 5.1(a)(i) and (ii) are collectively referred to as "**Accrued Amounts**"); and

(iii) such employee benefits, if any, to which Executive may be entitled under the Company's employee benefit plans as of the Termination Date; provided that, in no event shall Executive be entitled to any payments in the nature of severance or termination payments.

5.2 Death.

(a) Executive's employment hereunder shall terminate automatically upon Executive's death and Executive's estate and/or beneficiaries, as the case may be) shall be entitled to receive the following.

(i) the Accrued Amounts; and

(ii) any post-employment benefits due under the terms and conditions of the Employee Benefit Plans (provided that, in no event, shall the estate of Executive be entitled to any severance or termination payments).

5.3 Notice of Termination. Any termination of Executive's employment hereunder by the Company or by Executive (other than termination pursuant to Section 5.2 on account of Executive's death) shall be communicated by written notice of termination ("**Notice of Termination**") to the other party hereto in accordance with Section 25.

5.4 Termination Date. Executive's "**Termination Date**" shall be:

(a) if Executive's employment hereunder terminates on account of Executive's death, the date of Executive's death; and

(b) if either the Company terminates the Executive's employment or Executive terminates his employment, upon the date the Notice of Termination is delivered to the respective party.

5.5 Resignation of All Other Positions. Upon termination of Executive's employment hereunder for any reason, Executive agrees to resign, effective on the Termination Date, from all positions that Executive holds as an officer or member of the Board (or a committee thereof) of the Company or any of its affiliates.

5.6 Section 280G.

(a) Notwithstanding any other provision of this Agreement or any other plan, arrangement or agreement to the contrary, if any of the payments or benefits received or to be received by Executive (including, without limitation, any payment or benefits received in

connection with a Change in Control or Executive's termination of employment, whether pursuant to the terms of this Agreement or any other plan, arrangement, or agreement, or otherwise) constitute "parachute payments" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "**Code**") and will be subject to the excise tax imposed under Section 4999 of the Code (the "**Excise Tax**"), the Company shall either (i) reduce (but not below zero) such payments or benefits received or to be received by Executive so that the aggregate present value of the payments and benefits received by Executive is $1.00 less than the amount which would otherwise cause Executive to incur an Excise Tax, or (ii) be paid in full, whichever results in the greatest net after-tax payment to Executive.

(b) All calculations and determinations under this Section 5.6 shall be made by an independent accounting firm or independent tax counsel appointed by the Company (the "**Tax Counsel**") whose determinations shall be conclusive and binding on the Company and Executive for all purposes. For purposes of making the calculations and determinations required by this Section 5.6, the Tax Counsel may rely on reasonable, good faith assumptions and approximations concerning the application of Section 280G and Section 4999 of the Code. The Company and Executive shall furnish the Tax Counsel with such information and documents as the Tax Counsel may reasonably request in order to make its determinations under this Section 5.6. The Company shall bear all costs the Tax Counsel may reasonably incur in connection with its services.

6. Cooperation. The parties agree that certain matters in which Executive will be involved during the Employment Term may necessitate Executive's cooperation in the future. Accordingly, following the termination of Executive's employment for any reason, for a period of six (6) months, to the extent reasonably requested by the Board, Executive shall cooperate with the Company in connection with matters arising out of Executive's service to the Company; provided that, the Company shall make reasonable efforts to minimize disruption of Executive's other activities. The Company shall reimburse Executive for reasonable expenses incurred in connection with such cooperation and, to the extent that Executive is required to spend substantial time on such matters, the Company shall compensate Executive at an hourly rate based on Executive's Base Salary on the Termination Date.

7. Confidential Information. Executive understands and acknowledges that during the Employment Term, he will have access to and learn about Confidential Information, as defined below.

7.1 Confidential Information Defined.

(a) Definition.

For purposes of this Agreement, "**Confidential Information**" includes, but is not limited to, all information not generally known to the public, in spoken, printed, electronic or any other form or medium, relating directly or to and information that is used, developed or obtained by the Company or any of its affiliates (collectively, the "**Company Group**") in connection with its business, including, but not limited to, information, observations and data obtained by Executive during Executive's employment with the Company concerning: business affairs, business processes, practices, products, methods, policies, plans, publications, documents, research, operations, services, fees, pricing structures, analyses,

photographs, strategies, techniques, agreements, contracts, terms of agreements, transactions, potential transactions, negotiations, pending negotiations, know-how, trade secrets, computer programs, computer software, applications, operating systems, software design, web design, work-in-process, databases, manuals, records, articles, systems, material, sources of material, supplier information, vendor information, financial information, results, accounting information, accounting records, legal information, marketing information, advertising information, pricing information, credit information, design information, payroll information, staffing information, personnel information, employee lists, supplier lists, vendor lists, developments, reports, internal controls, security procedures, graphics, drawings, sketches, market studies, sales information, revenue, costs, formulae, notes, communications, algorithms, product plans, designs, styles, models, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, customer lists, client information, client lists, restaurant partner list of the Company Group or its businesses or any existing or prospective customer, supplier, investor or other associated third party, or of any other person or entity that has entrusted information to the Company Group in confidence.

Executive understands that the above list is not exhaustive, and that Confidential Information also includes other information that is marked or otherwise identified as confidential or proprietary, or that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.

Executive understands and agrees that Confidential Information includes information developed by him in the course of his employment by the Company as if the Company furnished the same Confidential Information to Executive in the first instance. Confidential Information shall not include information that is generally available to and known by the public at the time of disclosure to Executive; provided that, such disclosure is through no direct or indirect fault of Executive or person(s) acting on Executive's behalf.

(b) Company Creation and Use of Confidential Information.

Executive understands and acknowledges that the Company has invested, and continues to invest, substantial time, money, and specialized knowledge into developing its resources, creating a customer base, generating customer and potential customer lists, training its employees, and improving its offerings in the field of restaurant delivery services. Executive understands and acknowledges that as a result of these efforts, the Company has created, and continues to use and create Confidential Information. This Confidential Information provides the Company with a competitive advantage over others in the marketplace.

(c) Disclosure and Use Restrictions.

Executive agrees and covenants: (i) to treat all Confidential Information as strictly confidential; (ii) not to directly or indirectly disclose, publish, communicate, or make available Confidential Information, or allow it to be disclosed, published, communicated, or

made available, in whole or part, to any entity or person whatsoever (including other employees of the Company) not having a need to know and authority to know and use the Confidential Information in connection with the business of the Company and, in any event, not to anyone outside of the direct employ of the Company except as required in the performance of Executive's authorized employment duties to the Company or with the prior consent of the Board acting on behalf of the Company in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent); and (iii) not to access or use any Confidential Information, and not to copy any documents, records, files, media, or other resources containing any Confidential Information, or remove any such documents, records, files, media, or other resources from the premises or control of the Company, except as required in the performance of Executive's authorized employment duties to the Company or with the prior consent of the Board acting on behalf of the Company in each instance (and then, such disclosure shall be made only within the limits and to the extent of such duties or consent). Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. Executive shall promptly provide written notice of any such order to the Board.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 ("DTSA"). Notwithstanding any other provision of this Agreement:

(i) Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that:

(A) is made (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or

(B) is made in a complaint or other document filed under seal in a lawsuit or other proceeding.

(ii) If Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the Company's trade secrets to Executive's attorney and use the trade secret information in the court proceeding if Executive:

(A) files any document containing trade secrets under seal; and

(B) does not disclose trade secrets, except pursuant to court order.

Executive understands and acknowledges that his obligations under this Agreement with regard to any particular Confidential Information shall commence immediately upon Executive first having access to such Confidential Information (whether

before or after he begins employment by the Company) and shall continue during and after his employment by the Company until such time as such Confidential Information has become public knowledge other than as a result of Executive's breach of this Agreement or breach by those acting in concert with Executive or on Executive's behalf.

8. Restrictive Covenants.

8.1 Acknowledgement. Executive understands that the nature of Executive's position gives him access to and knowledge of Confidential Information and places him in a position of trust and confidence with the Company. Executive understands and acknowledges that the intellectual services he provides to the Company are unique, special, or extraordinary. Executive further understands and acknowledges that the Company's ability to reserve these for the exclusive knowledge and use of the Company is of great competitive importance and commercial value to the Company, and that improper use or disclosure by Executive is likely to result in unfair or unlawful competitive activity.

8.2 Non-Competition. Because of the Company's legitimate business interest as described herein and the good and valuable consideration offered to Executive, during the Employment Term and for the twelve (12) month period beginning on the last day of Executive's employment with the Company, Executive agrees and covenants not to engage in Prohibited Activity within any state or jurisdiction in which the Company or its subsidiaries then operate, have operated at any time during the Employment Term or demonstrably propose or intend to operate (the "**Restricted Territory**").

For purposes of this Section 8, "**Prohibited Activity**" is activity in which Executive contributes his knowledge, directly or indirectly, in whole or in part, as an employee, employer, owner, operator, manager, advisor, consultant, agent, employee, partner, director, stockholder, officer, volunteer, intern, or any other similar capacity to an entity engaged primarily in the food delivery or payment processing business. Prohibited Activity also includes activity that may require or inevitably requires disclosure of trade secrets, proprietary information, or Confidential Information.

The Company regards the following as its primary, but not exclusive, competitors engaged in the business of food delivery: Ubereats, Postmates, GrubHub and DoorDash.

Nothing herein shall prohibit Executive from purchasing or owning less than five percent (5%) of the publicly traded securities of any corporation, provided that such ownership represents a passive investment and that Executive is not a controlling person of, or a member of a group that controls, such corporation.

This Section 8 does not, in any way, restrict or impede Executive from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. Executive shall promptly provide written notice of any such order to the Board.

8.3 Non-Solicitation of Employees. Executive agrees and covenants not to directly or indirectly solicit, hire, recruit, attempt to hire or recruit, or induce the termination of employment of any employee of the Company during the Employment Term and a twelve (12) month period beginning on the last day of Executive's employment with the Company.

8.4 Non-Solicitation of Customers. Executive understands and acknowledges that because of Executive's experience with and relationship to the Company, he will have access to and learn about much or all of the Company's customer information. "Customer information" includes, but is not limited to, names, phone numbers, addresses, e-mail addresses, order history, order preferences, chain of command, pricing information, and other information identifying facts and circumstances specific to the customer and relevant to sales and services.

Executive understands and acknowledges that loss of this customer relationship and/or goodwill will cause significant and irreparable harm to the Company.

Executive agrees and covenants, during the Employment Term and the twenty-four (24) month period beginning on the last day of Executive's employment with the Company, not to directly or indirectly solicit, contact (including but not limited to e-mail, regular mail, express mail, telephone, fax, and instant message), attempt to contact, or meet with the Company's current customers located in the Restricted Territory for purposes of offering or accepting goods or services similar to or competitive with those offered by the Company.

9. Non-Disparagement. Executive agrees and covenants that he will not at any time, directly or indirectly, make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the Company or its businesses, or any of its employees, officers, shareholders, members or advisors, or any member of the Board.

This Section 9 does not, in any way, restrict or impede Executive from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation, or order. Executive shall promptly provide written notice of any such order to the Board.

The Company agrees and covenants that it shall cause its officers and directors to refrain from making any defamatory or disparaging remarks, comments, or statements concerning Executive to any third parties.

10. Acknowledgement. Executive acknowledges and agrees that the services to be rendered by him to the Company are of a special and unique character; that Executive will obtain knowledge and skill relevant to the Company's industry, methods of doing business and marketing strategies by virtue of Executive's employment; and that the restrictive covenants and other terms and conditions of this Agreement are reasonable and reasonably necessary to protect the legitimate business interest of the Company.

Executive further acknowledges that the amount of his compensation reflects, in part, his obligations and the Company's rights under Section 7, Section 8, and Section 9 of this Agreement; that he has no expectation of any additional compensation, royalties or other payment of any kind not otherwise referenced

herein in connection herewith; and that he will not be subject to undue hardship by reason of his full compliance with the terms and conditions of Section 7, Section 8, and Section 9 of this Agreement or the Company's enforcement thereof.

11. Remedies. In the event of a breach or threatened breach by Executive of Section 7, Section 8, or Section 9 of this Agreement, Executive hereby consents and agrees that the Company shall be entitled to seek, in addition to other available remedies, a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages or that money damages would not afford an adequate remedy, and without the necessity of posting any bond or other security. The aforementioned equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief.

12. Arbitration. Any dispute, controversy, or claim arising out of or related to this Agreement, except for disputes arising under Section 7, Section 8, or Section 9 of this Agreement (including, without limitation, any claim for injunctive relief), or its interpretation, application, implementation, breach or enforcement which the parties hereto are unable to resolve by mutual agreement, shall be settled by submission by either Executive or the Company of the controversy, claim or dispute to binding arbitration in Dover, Delaware (unless the parties hereto agree in writing to a different location), before a single arbitrator in accordance with the Employment Dispute Resolution Rules of the American Arbitration Association then in effect. In any such arbitration proceeding the parties hereto agree to provide all discovery deemed necessary by the arbitrator. The arbitration shall be a documents-only proceeding. The decision and award made by the arbitrator shall be accompanied by a reasoned opinion, and shall be final, binding and conclusive on all parties hereto for all purposes, and judgment may be entered thereon in any court having jurisdiction thereof. The prevailing party in such arbitration shall be entitled to reimbursement from the non-prevailing party for the totality of the arbitrator's, administrative, and reasonable legal fees and costs. Upon the request of any of the parties hereto, at any time prior to the beginning of the arbitration hearing the parties may attempt in good faith to settle the dispute by mediation administered by the American Arbitration Association.

13. Proprietary Rights.

13.1 Work Product. Executive acknowledges and agrees that all right, title, and interest in and to all writings, works of authorship, technology, inventions, discoveries, processes, techniques, methods, ideas, concepts, research, proposals, materials, and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, amended, conceived, or reduced to practice by Executive individually or jointly with others during the period of his employment by the Company and relate in any way to the business or contemplated business, products, activities, research, or development of the Company or result from any work performed by Executive for the Company (in each case, regardless of when or where prepared or whose equipment or other resources is used in preparing the same), all rights and claims related to the foregoing, and all printed, physical and electronic copies, and other tangible embodiments thereof (collectively, "**Work Product**"), as well as any and all rights in and to US and foreign (a) patents, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how, and other

confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights, all improvements thereto and all similar or equivalent rights or forms of protection in any part of the world (collectively, "**Intellectual Property Rights**"), shall be the sole and exclusive property of the Company.

For purposes of this Agreement, Work Product includes, but is not limited to, Company information, including plans, publications, research, strategies, techniques, agreements, documents, contracts, terms of agreements, negotiations, know-how, computer programs, computer applications, software design, web design, work in process, databases, manuals, results, developments, reports, graphics, drawings, sketches, market studies, formulae, notes, communications, algorithms, product plans, product designs, styles, models, audiovisual programs, inventions, unpublished patent applications, original works of authorship, discoveries, experimental processes, experimental results, specifications, customer information, client information, customer lists, client lists, manufacturing information, marketing information, advertising information, and sales information.

13.2 Work Made for Hire; Assignment. Executive acknowledges that, by reason of being employed by the Company at the relevant times, to the extent permitted by law, all of the Work Product consisting of copyrightable subject matter is "work made for hire" as defined in 17 U.S.C. § 101 and such copyrights are therefore owned by the Company. To the extent that the foregoing does not apply, Executive hereby irrevocably assigns to the Company, for no additional consideration, Executive's entire right, title, and interest in and to all Work Product and Intellectual Property Rights therein, including the right to sue, counterclaim, and recover for all past, present, and future infringement, misappropriation, or dilution thereof, and all rights corresponding thereto throughout the world. Nothing contained in this Agreement shall be construed to reduce or limit the Company's rights, title, or interest in any Work Product or Intellectual Property Rights so as to be less in any respect than that the Company would have had in the absence of this Agreement.

13.3 Further Assurances; Power of Attorney. During and after his employment, Executive agrees to reasonably cooperate with the Company to (a) apply for, obtain, perfect, and transfer to the Company the Work Product as well as any and all Intellectual Property Rights in the Work Product in any jurisdiction in the world; and (b) maintain, protect and enforce the same, including, without limitation, giving testimony and executing and delivering to the Company any and all applications, oaths, declarations, affidavits, waivers, assignments, and other documents and instruments as shall be requested by the Company. Executive hereby irrevocably grants the Company power of attorney to execute and deliver any such documents on Executive's behalf in his name and to do all other lawfully permitted acts to transfer the Work Product to the Company and further the transfer, prosecution, issuance, and maintenance of all Intellectual Property Rights therein, to the full extent permitted by law, if Executive does not promptly cooperate with the Company's request (without limiting the rights the Company shall have in such circumstances by operation of law). The power of attorney is coupled with an interest and shall not be affected by Executive's subsequent incapacity.

13.4 No License. Executive understands that this Agreement does not, and shall not be construed to, grant Executive any license or right of any nature with respect to any Work Product or Intellectual Property Rights or any Confidential Information, materials, software, or other tools made available to him by the Company.

14. Security.

14.1 Security and Access. Executive agrees and covenants (a) to comply with all Company security policies and procedures as in force from time to time including without limitation those regarding computer equipment, telephone systems, voicemail systems, facilities access, monitoring, key cards, access codes, Company intranet, internet, social media and instant messaging systems, computer systems, e-mail systems, computer networks, document storage systems, software, data security, encryption, firewalls, passwords and any and all other Company facilities, IT resources and communication technologies ("**Facilities and Information Technology Resources**"); (b) not to access or use any Facilities and Information Technology Resources except as authorized by the Company; and (iii) not to access or use any Facilities and Information Technology Resources in any manner after the termination of Executive's employment by the Company, whether termination is voluntary or involuntary. Executive agrees to notify the Company promptly in the event he learns of any violation of the foregoing by others, or of any other misappropriation or unauthorized access, use, reproduction, or reverse engineering of, or tampering with any Facilities and Information Technology Resources or other Company property or materials by others.

14.2 Exit Obligations. Upon (a) voluntary or involuntary termination of Executive's employment or (b) the Company's request at any time during Executive's employment, Executive shall (i) provide or return to the Company any and all Company property, including keys, key cards, access cards, identification cards, security devices, employer credit cards, network access devices, computers, cell phones, smartphones, PDAs, pagers, fax machines, equipment, speakers, webcams, manuals, reports, files, books, compilations, work product, e- mail messages, recordings, tapes, disks, thumb drives or other removable information storage devices, hard drives, negatives, and data and all Company documents and materials belonging to the Company and stored in any fashion, including but not limited to those that constitute or contain any Confidential Information or Work Product, that are in the possession or control of Executive, whether they were provided to Executive by the Company or any of its business associates or created by Executive in connection with his employment by the Company; and (ii) delete or destroy all copies of any such documents and materials not returned to the Company that remain in Executive's possession or control, including those stored on any non-Company devices, networks, storage locations, and media in Executive's possession or control.

15. Publicity. Executive hereby irrevocably consents to any and all uses and displays, by the Company and its agents, representatives and licensees, of Executive's name, voice, likeness, image, appearance, and biographical information in, on or in connection with any pictures, photographs, audio and video recordings, digital images, websites, television programs and advertising, other advertising and publicity, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes, and all other printed and electronic forms and media throughout the world, at any time during or within six (6) months of termination of his employment by the Company, for all legitimate commercial and business purposes of the Company ("**Permitted Uses**") without further consent from or royalty, payment, or other compensation to Executive. Executive hereby forever waives and releases the Company and its directors, officers, employees, and agents from any and all claims, actions, damages, losses, costs, expenses, and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the period of his employment by the Company, arising directly or indirectly from the Company's and its agents', representatives', and licensees' exercise of their rights in connection with any Permitted Uses.

16. Governing Law: Jurisdiction and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of the State of Delaware without regard to conflicts of law principles and irrespective of Executive's work location. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the State of Delaware. The parties hereby irrevocably submit to the non-exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

17. Entire Agreement. Unless specifically provided herein, this Agreement contains all of the understandings and representations between Executive and the Company pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter, including, for the avoidance of doubt, the offer letter dated August [ ], 2021, between Executive and the Company. The parties mutually agree that the Agreement can be specifically enforced in court and can be cited as evidence in legal proceedings alleging breach of the Agreement.

18. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by Executive and by the Board. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power, or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

19. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be enforceable only if modified, or if any portion of this Agreement shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Agreement, the balance of which shall continue to be binding upon the parties with any such modification to become a part hereof and treated as though originally set forth in this Agreement.

The parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by law.

The parties expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

20. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

21. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

22. Tolling. Should Executive violate any of the terms of the restrictive covenant obligations articulated herein, the obligation at issue will run from the first date on which Executive ceases to be in violation of such obligation.

23. Section 409A.

23.1 General Compliance. This Agreement is intended to comply with Section 409A of the Code and the regulations, rules and other guidance promulgated thereunder (**"Section 409A"**) or an exemption thereunder and shall be construed and administered in accordance with Section 409A. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by Executive on account of non- compliance with Section 409A.

23.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to Executive in connection with his termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and Executive is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the Termination Date or, if earlier, on Executive's death (the "**Specified Employee Payment Date**"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date and interest on such amounts calculated based on the applicable federal rate published by the Internal Revenue Service for the month in which Executive's separation from service occurs shall be paid to Executive in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

23.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(b) any reimbursement of an eligible expense shall be paid to Executive on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

24. Successors and Assigns. This Agreement is personal to Executive and shall not be assigned by Executive. Any purported assignment by Executive shall be null and void from the initial date of the purported assignment. The Company may assign this Agreement to any successor or assign (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business or assets of the Company. This Agreement shall inure to the benefit of the Company and permitted successors and assigns.

25. Notice. Notices and all other communications provided for in this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, or by overnight carrier to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the Company:

Waitr Holdings Inc.
214 Jefferson Street
Lafayette, LA 70501
Attn: Carl Grimstad, Chief Executive Officer
Carl.grimstad@waitrapp.com
Attn: Thomas C. Pritchard, General Counsel
Thomas.pritchard@waitrapp.com

If to Executive, to his address most recently on file with the Company.

26. Representations of Executive. Executive represents and warrants to the Company that:

(a) Executive's acceptance of employment with the Company and the performance of his duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which he is a party or is otherwise bound; and

(b) Executive's acceptance of employment with the Company and the performance of his duties hereunder will not violate any non-solicitation, non- competition, or other similar covenant or agreement of a prior employer.

27. Withholding. The Company shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the Company to satisfy any withholding tax obligation it may have under any applicable law or regulation.

28. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

29. Acknowledgement of Full Understanding. EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. EXECUTIVE ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

WAITR HOLDINGS INC.

By: /s/ Carl Grimstad
Name: Carl Grimstad
Title: Chief Executive Officer

EXECUTIVE

/s/ Armen Yeghyazarians
Armen Yeghyazarians

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

I, Carl A. Grimstad, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Waitr Holdings Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2021

By: /s/ Carl A. Grimstad

Carl A. Grimstad
Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, Leo Bogdanov, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Waitr Holdings Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2021

By: /s/ Leo Bogdanov

Leo Bogdanov
Chief Financial Officer
(Principal Financial Officer)

EXHIBIT 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TOSECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Waitr Holdings Inc. (the "Company") on Form 10-Q for the quarter ended September 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Carl A. Grimstad, certify, as of the date hereof and solely for purposes of and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates set forth and for the periods presented in the Report.

By: /s/ Carl A. Grimstad
Carl A. Grimstad
Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

Date: November 2, 2021

EXHIBIT 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TOSECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Waitr Holdings Inc. (the "Company") on Form 10-Q for the quarter ended September 30, 2021 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Leo Bogdanov, certify, as of the date hereof and solely for purposes of and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. The Report fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m); and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates set forth and for the periods presented in the Report.

By: /s/ Leo Bogdanov
Leo Bogdanov
Chief Financial Officer
(Principal Financial Officer)

Date: November 2, 2021