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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2018
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 001-34785

XpresSpa Group, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**20-4988129**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
780 Third Avenue, 12th Floor **New York, NY**	**10017**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (212) 309-7549

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

Title of each class	**Name of each exchange on which registered**
Common Stock, par value $0.01 per share	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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 x 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 x No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a 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 Act). Yes ☐ No ☒

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant (without admitting that any person whose shares are not included in such calculation is an affiliate), computed by reference to the closing sale price of such shares on the Nasdaq Stock Market LLC on June 29, 2018 was $5,400,389.

As of March 15, 2019, 1,932,326 shares of the registrant's common stock are outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

The following documents (or parts thereof) are incorporated by reference into the following parts of this Annual Report on Form 10-K: Certain information required in Part III of this Annual Report on Form 10-K is incorporated from the Registrant's Proxy Statement for the 2019 Annual Meeting of Stockholders.

EXPLANATORY NOTE

On February 22, 2019, we filed a certificate of amendment to our amended and restated certificate of incorporation with the Secretary of State of the State of Delaware to effect a 1-for-20 reverse stock split of our shares of common stock, par value $0.01 per share (the "Common Stock"). Such amendment and ratio were previously approved by our stockholders and board of directors, respectively.

As a result of the reverse stock split, every twenty (20) shares of our pre-reverse split Common Stock were combined and reclassified into one (1) share of Common Stock. Proportionate voting rights and other rights of Common Stock holders were affected by the reverse stock split. Stockholders who would have otherwise held a fractional share of Common Stock received payment in cash in lieu of any such resulting fractional shares of Common Stock as the post-reverse split amounts of Common Stock were rounded down to the nearest full share. Such cash payment in lieu of a fractional share of Common Stock was calculated by multiplying such fractional interest in one share of Common Stock by the closing trading price of our Common Stock on February 22, 2019, and rounded to the nearest cent. No fractional shares were issued in connection with the reverse stock split.

Our Common Stock began trading on the Nasdaq Capital Market on a post-reverse split basis at the open of business on February 25, 2019.

All information in this Annual Report on Form 10-K give effect to the reverse stock split and all share amounts have been adjusted to reflect the reverse stock split.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These statements relate, among other matters, to our anticipated financial performance, future revenues or earnings, business prospects, projected ventures, new products and services, anticipated market performance and similar matters.

These risks and uncertainties, many of which are beyond our control, include, but are not limited to, the following:

- our ability to continue as a going concern;
- the impact of our business and asset acquisitions on our operations and operating results including our ability to realize the expected value and benefits of such acquisitions;
- our ability to develop and offer new products and services;
- our ability to raise additional capital to fund our operations and business plan and the effects that such financing may have on the value of the equity instruments held by our stockholders;
- general economic conditions and level of consumer and corporate spending on health and wellness and travel;
- our ability to secure new locations, maintain existing ones, and ensure continued customer traffic at those locations;
- our ability to hire a skilled labor force and the costs associated with that labor;
- our ability to accurately forecast the costs associated with opening new retail locations and maintaining existing ones and the revenue derived from our retail locations;
- performance by our Airport Concession Disadvantaged Business Enterprise partners on obligations set forth in our joint venture agreements;
- our ability to protect our confidential information and customers' financial data and other personal information;
- failure or disruption to our information technology systems;
- the impact of the recently passed federal tax reform bill;
- our ability to retain key members of our management team;
- the loss of, or an adverse change with regard to, one or more of our significant suppliers, distributors, vendors or other business relationships;
- unexpected events and trends in the health and wellness and travel industries;
- market acceptance, quality, pricing, availability and useful life of our products and/or services, as well as the mix of our products and services sold;
- competitive conditions within our industries;
- our compliance with laws and regulations in the jurisdictions in which we do business and any changes in such laws and regulations;
- lawsuits, claims, and investigations that may be filed against us and other events that may adversely affect our reputation;
- our ability to protect and maintain our intellectual property rights; and
- our ability to license and monetize our patents, including litigation outcomes.

Forward-looking statements may appear throughout this Annual Report on Form 10-K, including, without limitation, the following sections: Item 1 "Business," Item 1A "Risk Factors," and Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations." The statements contained herein that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Forward-looking statements are often identified by the use of words such as, but not limited to, "anticipates," "believes," "can," "continues," "could," "estimates," "expects," "intends," "may," "will," "will be," "will continue," "will likely result," "plans," "predicts," "projects," "seeks," "should," "future," "targets," "continue," "would," or the negative of such terms, and similar or comparable terminology or expressions or variations intended to identify forward-looking statements. These statements are based on current expectations and assumptions based on information currently available to us. Such forward-looking statements are subject to risks, uncertainties, assumptions (that may never materialize or may prove incorrect) and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. These forward-looking statements are not guarantees of future performance, and actual results may vary materially from the results and expectations discussed. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in our Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and in this Annual Report on Form 10-K, and in particular, the risks discussed under the caption "Risk Factors" in Item 1A of this report and those discussed in other documents we file with the Securities and Exchange Commission ("SEC"). The forward-looking statements set forth herein speak only as of the date of this report. We undertake no obligation to revise or publicly release the results of any revision to these forward-looking statements to reflect events or circumstances that may arise after the date of such forward-looking statements, except as required by law. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.

All references in this Annual Report on Form 10-K to "we," "us" and "our" refer to *XpresSpa Group, Inc. (prior to January 5, 2018, known as "FORM Holdings Corp.")*, a Delaware corporation, and its consolidated subsidiaries unless the context requires otherwise.

PART I

ITEM 1. BUSINESS

Overview

On January 5, 2018, we changed our name to XpresSpa Group, Inc. ("XpresSpa Group" or the "Company") from FORM Holdings Corp. Our Common Stock, par value $0.01 per share, which had previously been listed under the trading symbol "FH" on the Nasdaq Capital Market, has been listed under the trading symbol "XSPA" since January 8, 2018. Rebranding to XpresSpa Group aligned our corporate strategy to build a pure-play health and wellness services company, which we commenced following our acquisition of XpresSpa Holdings, LLC ("XpresSpa") on December 23, 2016.

As a result of the transition to a pure-play health and wellness services company, we currently have one operating segment that is also our sole reporting unit, XpresSpa, a leading airport retailer of spa services. XpresSpa is a well-recognized airport spa brand with 56 locations, consisting of 51 domestic and 5 international locations as of December 31, 2018. XpresSpa offers travelers premium spa services, including massage, nail and skin care, as well as spa and travel products. During 2018 and 2017, XpresSpa generated $49,294,000 and $48,373,000 of revenue, respectively. In 2018, approximately 83% of XpresSpa's total revenue was generated by services, primarily massage and nailcare, and 17% was generated by retail products, primarily travel accessories.

We own certain patent portfolios, which we look to monetize through sales and licensing agreements. During the year ended December 31, 2018, we determined that our intellectual property operating segment will no longer be an area of focus for us and, as such, will no longer be reflected as a separate operating segment, as it is not expected to generate any material revenues or operating costs.

In October 2017, we completed the sale of FLI Charge, Inc. ("FLI Charge") and in March 2018, we completed the sale of Group Mobile Int'l LLC ("Group Mobile"). These two entities previously comprised our technology operating segment. The results of operations for FLI Charge and Group Mobile are presented in the consolidated statements of operations and comprehensive loss as consolidated net loss from discontinued operations. The carrying amounts of assets and liabilities belonging to Group Mobile as of December 31, 2018, and FLI Charge and Group Mobile as of December 31, 2017, are presented in the consolidated balance sheets as assets held for disposal and liabilities held for disposal, respectively.

Our Strategy and Outlook

XpresSpa is a leading airport retailer of spa services and related products. It is a well-recognized and popular airport spa brand with an approximately 50% market share in the United States and nearly three times the number of domestic locations as its closest competitor. It provides approximately one million services per year. As of December 31, 2018, XpresSpa operated 56 total locations in 23 airports, including one off-airport spa at Westfield World Trade Center in New York City, in three countries including the United States, Netherlands and United Arab Emirates. XpresSpa also sells wellness and travel products through its internet site, www.xpresspa.com. Key services and products offered include:

- massage services for the neck, back, feet and whole body;
- nail care, such as pedicures, manicures and polish changes;

- travel products, such as neck pillows, blankets and massage tools; and

- new offerings, such as cryotherapy services, NormaTec compression services, and Dermalogica personal care services and retail products.

For over 15 years, increased security requirements have led travelers to spend more time at the airport. In addition, in anticipation of the long and often stressful security lines, travelers allow for more time to get through security and, as a result, often experience increased downtime prior to boarding. Consequently, travelers at large airport hubs have idle time in the terminal after passing through security.

XpresSpa was developed to address the stress and idle time spent at the airport, allowing travelers to spend this time productively, by relaxing and focusing on personal care and wellness. We believe that XpresSpa is well positioned to benefit from consumers' growing interest in health and wellness and increasing demand for spa services and related wellness products.

Liquidity and Going Concern

As of December 31, 2018, we had approximately $3,403,000 of cash and cash equivalents, $2,247,000 of inventory and prepaid expenses and $109,000 of assets held for disposal, which amount to total current assets of $5,759,000. Our total current liabilities balance, which includes accounts payable, accrued expenses, debt, and the current portion of Convertible Notes (as defined below), was $16,658,000 as of December 31, 2018. The working capital deficiency of $10,899,000 as of December 31, 2018 includes $1,986,000 of convertible notes classified as short-term for which principal repayments may be made in shares of Common Stock at our election. In addition, included in total current liabilities is approximately $1,742,000 which relates to obligations that will not settle in cash, and an additional $465,000 of liabilities that are not expected to settle in the next twelve months.

While we have aggressively reduced operating and overhead expenses, and while we continue to focus on our overall profitability, we have continued to generate negative cash flows from operations and we expect to incur net losses in the foreseeable future. As discussed above and elsewhere in this Annual Report on Form 10-K, the report of our independent registered public accounting firm on our financial statements for the years ended December 31, 2018 and 2017 includes an explanatory paragraph indicating that there is substantial doubt about our ability to continue as a going concern. The receipt of this explanatory paragraph with respect to our financial statements for the years ended December 31, 2018 and 2017 will result in a breach of a covenant under the Senior Secured Note (as defined below) which, if unremedied for a period of 30 days after the date hereof, will constitute an event of default under the Senior Secured Note. Upon the occurrence of an event of default under the Senior Secured Note, Rockmore may, among other things, declare the Senior Secured Note and all accrued and unpaid interest thereon and all other amounts owing under the Senior Secured Note to be due and payable. If the maturity date of the Senior Secured Note is accelerated as a result of the event of default referenced above, an event of default under the Convertible Notes would be triggered. If an event of default under the Convertible Notes occurs, the outstanding principal amount of the Convertible Notes, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the holder's election, immediately due and payable in cash.

We have taken actions to improve our overall cash position and access to liquidity by exploring valuable strategic partnerships, right-sizing our corporate structure, and stream-lining our operations. We expect that the actions taken in 2018 and early 2019 will enhance our liquidity and financial environment. In addition, we expect to generate additional liquidity through the monetization of certain investments and other assets. We expect that these actions will be executed in alignment with the anticipated timing of our liquidity needs. There can be no assurance, however, that any such opportunities will materialize.

Our historical operating results indicate that there is substantial doubt related to the Company's ability to continue as a going concern. We believe it is probable that the actions discussed above will transpire and will successfully mitigate the substantial doubt raised by our historical operating results and will satisfy our liquidity needs 12 months from the issuance of the financial statements. However, we cannot reasonably predict with any certainty that the results of our planned actions will generate the expected liquidity required to satisfy our liquidity needs.

If we continue to experience operating losses, and we are not able to generate additional liquidity through the actions described above or through some combination of other actions, while not expected, we may not be able to access additional funds and we might need to secure additional sources of funds, which may or may not be available to us. Additionally, a failure to generate additional liquidity could negatively impact our access to inventory or services that are important to the operation of our business.

Recent Developments

CEO Transition

On February 8, 2019, Edward Jankowski resigned as Chief Executive Officer of the Company and as a director of the Company. Mr. Jankowski's resignation was not as a result of any disagreement with the Company on any matters related to the Company's operations, policies or practices. Mr. Jankowski will receive termination benefits including $375,000 payable in equal installments over a twelve-month term commencing on February 13, 2019 and COBRA continuation coverage paid in full by the Company for up to a maximum of twelve months.

Effective as of February 11, 2019, Douglas Satzman was appointed by our board of directors as the Chief Executive Officer of the Company and as a director of the Company.

Reverse Stock Split

On February 22, 2019, we filed a certificate of amendment to our amended and restated certificate of incorporation with the Secretary of State of the State of Delaware to effect a 1-for-20 reverse stock split of our shares of Common Stock. Such amendment and ratio were previously approved by our stockholders and board of directors, respectively.

As a result of the reverse stock split, every twenty (20) shares of our pre-reverse split Common Stock were combined and reclassified into one (1) share of Common Stock. Proportionate voting rights and other rights of Common Stock holders were affected by the reverse stock split. Stockholders who would have otherwise held a fractional share of Common Stock received payment in cash in lieu of any such resulting fractional shares of Common Stock as the post-reverse split amounts of Common Stock were rounded down to the nearest full share. Such cash payment in lieu of a fractional share of Common Stock was calculated by multiplying such fractional interest in one share of Common Stock by the closing trading price of our Common Stock on February 22, 2019, and rounded to the nearest cent. No fractional shares were issued in connection with the reverse stock split.

Our Common Stock began trading on the Nasdaq Capital Market on a post-reverse split basis at the open of business on February 25, 2019.

Dispositions

On October 20, 2017, we sold FLI Charge to a group of private investors and FLI Charge management, who now own and operate FLI Charge. In February 2019, the Company entered into an agreement to release FLI Charge's obligation to pay any royalties on FLI Charge's perpetual gross revenues with regard to conductive wireless charging, power, or accessories, and to cancel its warrants exercisable in FLI Charge in exchange for cash proceeds of $1,100,000 which were received in full on February 15, 2019.

On March 22, 2018, we sold Group Mobile to a third party. We have not provided any continued management or financing support to FLI Charge or Group Mobile.

Rebranding

On January 5, 2018, we changed our name to XpresSpa Group, Inc. from FORM Holdings Corp, which aligned our corporate strategy to build a pure-play health and wellness services company. Our Common Stock, par value $0.01 per share, which had previously been listed under the trading symbol "FH" on the Nasdaq Capital Market, has been listed under the trading symbol "XSPA" since January 8, 2018.

Sale of Patents

In January 2018, we sold certain patents to Crypto Currency Patent Holdings Company LLC, a unit of Marathon Patent Group, Inc. ("Marathon"), for approximately $1,250,000, comprised of $250,000 in cash and 250,000 shares of Marathon Common Stock valued at approximately $1,000,000 (the "Marathon Common Stock") at the time of the transaction. The Marathon Common Stock was subject to a lockup period (the "Lockup Period") which commenced on the Transaction Date and ended on July 11, 2018, subject to a leak-out provision.

Collaboration Agreement

On November 12, 2018, we entered into a Product Sale and Marketing Agreement (the "Collaboration Agreement") with Calm.com, Inc. ("Calm") primarily related to the display, marketing, promotion, offer for sale and sale of Calm's products in each of our branded stores throughout the United States.

The Collaboration Agreement will remain in effect until July 31, 2019, unless terminated earlier in accordance with its terms, and automatically renew for successive terms of six months unless either party provides written notice of termination no later than thirty days prior to any such automatic renewal.

Competition

XpresSpa operated 56 locations, which includes 51 domestic locations and 5 international locations as of December 31, 2018. Our domestic units operate within many of the largest and most heavily trafficked airports in the United States. The balance of the North American market is highly fragmented and is represented largely by small, privately-owned entities that operate one or two locations in a single airport. Only two other market participants operate 10 or more airport locations in the United States. The largest domestic competitor operates 16 locations in nine airports in North America. Outside of North America, this same competitor operates 20 locations in eight international airports.

Our Market

Airport retailers differ significantly from traditional retailers. Unlike traditional retailers, airport retailers benefit from a steady and largely predictable flow of traffic from a constantly changing customer base. Airport retailers also benefit from "dwell time," the period after travelers have passed through airport security and before they board an aircraft. For over 15 years, increased security requirements have led travelers to spend more time at the airport. In addition, in anticipation of the long and often stressful security lines, travelers allow for more time to get through security and, as a result, often experience increased downtime prior to boarding.

XpresSpa was developed to address the stress and idle time spent at the airport, allowing travelers to spend this time productively, by relaxing and focusing on personal care and wellness. We believe that XpresSpa is well positioned to benefit from consumers' growing interest in health and wellness and increasing demand for spa services and related wellness products. According to the Global Wellness Institute, global wellness was a $4.2 trillion industry in 2018, which was an increase of 13.5% from $3.7 trillion in 2015. In addition, according to the Global Wellness Institute, the global spa industry represented $119 billion in 2018 and the fitness, mind and body industry represented $595 billion in 2018.

In addition, a confluence of microeconomic events has created favorable conditions for the expansion of retail concepts at airports, in particular, retail concepts that attract higher spending from air travelers. The competition for airplane landings has forced airports to lower landing fees, which in turn has necessitated augmenting their retail offerings to offset budget shortfalls. Infrastructure projects at airports across the country, again intended to make an airport more desirable to airlines, require funding from bond issuances that in turn rely upon, in part, the expected minimum rent guarantees and expected income from concessionaires.

Equally as important to the industry growth is XpresSpa's flexible retail format. XpresSpa opens multiple locations annually, which have ranged in size from 200 square feet to 2,600 square feet, with a typical size of approximately 1,200 square feet. XpresSpa is able to adapt its operating model to almost any size location available in space constrained airports. This increased flexibility compared to other retail concepts allows XpresSpa to operate multiple stores within an airport, from which it enjoys synergies due to shared labor between stores.

XpresSpa believes that its operating metrics represent an attractive return on invested capital and, as a result, is pursuing new locations at airports and terminals around the country. Historically, XpresSpa has won approximately seventy percent of all requests for proposal ("RFP") in which it has participated.

Regulation

Our operations are subject to a range of laws and regulations adopted by national, regional and local authorities from the various jurisdictions in which we operate, including those relating to, among others, licensing (e.g., massage, nail, and cosmetology), public health and safety and fire codes. Failure to obtain or retain required licenses and approvals, including those related to licensing, public health and safety and fire codes, would adversely affect our operations. Although we have not experienced, and do not anticipate, significant problems obtaining required licenses, permits or approvals, any difficulties, delays or failures in obtaining such licenses, permits or approvals could delay or prevent the opening, or adversely impact the viability, of our operations.

Airport authorities in the United States frequently require that our airport concessions meet minimum Airport Concession Disadvantaged Business Enterprise ("ACDBE") participation requirements. The Department of Transportation's ("DOT") ACDBE program is implemented by recipients of DOT Federal Financial Assistance, including airport agencies that receive federal funding. The ACDBE program is administered by the Federal Aviation Administration ("FAA"), state and local ACDBE certifying agencies and individual airports. The ACDBE program is designed to help ensure that small firms owned and controlled by socially and economically disadvantaged individuals can compete for airport contracting and concession opportunities in domestic passenger service airports. The ACDBE regulations require that airport recipients establish annual ACDBE participation goals, review the scope of anticipated large prime contracts throughout the year, and establish contract-specific ACDBE participation goals. We generally meet the contract specific goals through an agreement providing for co-ownership of the retail location with a disadvantaged business enterprise. Frequently, and within the guidelines issued by the FAA, we may lend money to ACDBEs in connection with concession agreements in order to help the ACDBE fund the capital investment required under a concession agreement. The rules and regulations governing the certification of ACDBE participation in airport concession agreements are complex, and ensuring ongoing compliance is costly and time consuming. Further, if we fail to comply with the minimum ACDBE participation requirements in our concession agreements, we may be held responsible for breach of contract, which could result in the termination of a concession agreement and monetary damages. See "Item 1A. Risk Factors – Risks Related to our Business Operations – Failure to comply with minimum airport concession disadvantaged business enterprise participation goals and requirements could lead to lost business opportunities or the loss of existing business."

We are subject to the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986, the Occupational Safety and Health Act and various federal and state laws governing matters such as minimum wages, overtime, unemployment tax rates, workers' compensation rates, citizenship requirements and other working conditions. We are also subject to the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in public accommodations and employment, which may require us to design or modify our concession locations to make reasonable accommodations for disabled persons.

We are also subject to certain truth-in-advertising, general customs, consumer and data protection, product safety, workers' health and safety and public health rules that govern retailers in general, as well as the merchandise sold within the various jurisdictions in which we operate.

Employees

As of March 15, 2019, we had 517 full-time and 186 part-time employees. XpresSpa had 32 full-time employees in San Francisco International Airport, who are represented by a labor union and are covered by a collective bargaining agreement. XpresSpa had 20 full-time employees in Los Angeles International Airport, who are represented by a labor union and are covered by a collective bargaining agreement. We consider our relationships with our employees to be good.

Corporate Information

We were incorporated in Delaware as a corporation on January 9, 2006 and completed an initial public offering in June 2010. On January 5, 2018, we changed our name to XpresSpa Group, Inc. from FORM Holdings Corp. as part of a rebranding that aligned our corporate strategy to build a pure-play health and wellness services company. Our Common Stock, par value $0.01 per share, which was previously listed under the trading symbol "FH" on the Nasdaq Capital Market, has been listed under the trading symbol "XSPA" since January 8, 2018. Our principal executive offices are located at 780 Third Avenue, 12th Floor, New York, New York 10017. Our telephone number is (212) 309-7549 and our website address is *www.xpresspagroup.com*. We also operate the website *www.xpresspa.com*. References in this Annual Report on Form 10-K to our website address does not constitute incorporation by reference of the information contained on the website. We make our filings with the Securities and Exchange Commission, or the SEC, including our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, and amendments to the foregoing reports, available free of charge on or through our website as soon as reasonably practicable after we file these reports with, or furnish such reports to, the SEC. In addition, we post the following information on our website:

- our corporate code of conduct and our insider trading compliance manual; and
- charters for our audit committee, compensation committee, and nominating and corporate governance committee.

The public may read and copy any materials that we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Also, the SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including us, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at *http://www.sec.gov*.

ITEM 1A. RISK FACTORS

Our business, financial condition, results of operations and the trading price of our Common Stock could be materially adversely affected by any of the following risks as well as the other risks highlighted elsewhere in this Annual Report on Form 10-K. Additional risks and uncertainties not presently known to us or that we currently deem immaterial also may materially affect our business, financial condition and results of operations.

Risks Related to our Financial Condition and Capital Requirements

Our independent registered public accounting firm has expressed substantial doubt as to our ability to continue as a going concern.

The audited financial statements included in this annual report have been prepared assuming that we will continue as a going concern and do not include any adjustments that might result if we cease to continue as a going concern. The report of our independent registered public accounting firm on our financial statements for the years ended December 31, 2018 and 2017, included an explanatory paragraph indicating that there is substantial doubt about our ability to continue as a going concern. Our auditors' doubts are based on our recurring losses from operations and working capital deficiency. The inclusion of a going concern explanatory paragraph in future reports of our independent auditors may make it more difficult for us to secure additional financing or enter into strategic relationships on terms acceptable to us, if at all, and may materially and adversely affect the terms of any financing that we might obtain.

Our business and financial condition could be constrained by XpresSpa's outstanding debt, including the impact of the receipt of an explanatory paragraph with respect to our financial statements for the years ended December 31, 2018 and 2017 indicating that there is substantial doubt about our ability to continue as a going concern.

XpresSpa is obligated under a credit agreement and secured promissory note payable to Rockmore Investment Master Fund Ltd. ("Rockmore"), a related party, which has an outstanding balance of approximately $6,500,000, with a maturity date of December 31, 2019 (the "Senior Secured Note"). The Senior Secured Note accrues interest of 11.24% per annum. XpresSpa is obligated to make periodic payments on such debt obligations to Rockmore. While we do not anticipate failing to make any such debt payments, the failure to do so may result in the default of loan obligations, leading to financial and operational hardship. XpresSpa has granted Rockmore a security interest in all of its tangible and intangible personal property to secure its obligations under the Senior Secured Note. The Senior Secured Note is an outstanding obligation of XpresSpa but is guaranteed by us.

As discussed above and elsewhere in this Annual Report on Form 10-K, the report of our independent registered public accounting firm on our financial statements for the years ended December 31, 2018 and 2017 includes an explanatory paragraph indicating that there is substantial doubt about our ability to continue as a going concern. The receipt of this explanatory paragraph with respect to our financial statements for the years ended December 31, 2018 and 2017 will result in a breach of a covenant under the Senior Secured Note which, if unremedied for a period of 30 days after the date hereof, will constitute an event of default under the Senior Secured Note.

Upon the occurrence of an event of default under the Senior Secured Note, Rockmore may, among other things, declare the Senior Secured Note and all accrued and unpaid interest thereon and all other amounts owing under the Senior Secured Note to be due and payable.

In addition, we are obligated under our 5% Secured Convertible Notes due November 17, 2019 (the "Convertible Notes"), which collectively had an outstanding unamortized book balance of approximately $1,986,000 as of December 31, 2018, and a total fair value upon issuance of $4,350,000. The Convertible Notes accrue interest of 5% per annum subject to increase in the event of default to the lesser of 18% per annum or the maximum rate permitted under applicable law. The Convertible Notes, including interest accrued thereon, are convertible at any time until a Convertible Note is no longer outstanding, in whole or in part, at the option of the holders into shares of our Common Stock at a conversion price of $12.40 per share. We are obligated to make periodic payments on such debt obligations to each noteholder; and we can elect to make such payments either in cash or in stock. In addition, we have granted a security interest to the noteholders in all of our tangible and intangible personal property to secure our obligations under the Convertible Notes.

The Convertible Notes mature on November 17, 2019. If we fail to meet certain conditions under the terms of the Convertible Notes, we will be obligated to repay in cash any principal amount, interest and any other sum arising under the Convertible Notes that remains outstanding on the maturity date. If the maturity date of the Senior Secured Note is accelerated as a result of the event of default referenced above, an event of default under the Convertible Notes would be triggered. If an event of default under the Convertible Notes occurs, the outstanding principal amount of the Convertible Notes, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the holder's election, immediately due and payable in cash.

Our failure to cure the event of default under the Senior Secured Note could cause material harm to our business, financial condition and results of operations.

We may not be able to raise additional capital. Moreover, additional financing may have an adverse effect on the value of the equity instruments held by our stockholders.

We may choose to raise additional funds in connection with any potential acquisition of operating businesses or other assets. In addition, we may also need additional funds to respond to business opportunities and challenges, including our ongoing operating expenses, protection of our assets, development of new lines of business and enhancement of our operating infrastructure. While we may need to seek additional funding, we may not be able to obtain financing on acceptable terms, or at all. In addition, the terms of our financings may be dilutive to, or otherwise adversely affect, holders of our Common Stock. We may also seek additional funds through arrangements with collaborators or other third parties. We may not be able to negotiate arrangements on acceptable terms, if at all. If we are unable to obtain additional funding on a timely basis, we may be required to curtail or terminate some or all of our business plans. Any such financing that we undertake will likely be dilutive to our current stockholders.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

As of December 31, 2018, we had federal net operating loss carryforwards ("NOLs") of $150,926,000 which expire 20 years from the respective tax years to which they relate, and $23,139,000 for U.S. federal purposes with an indefinite life due to new regulations in the "Tax Cuts and Jobs Act," or TCJA of 2017. Our ability to utilize our NOLs may be limited under Section 382 of the Internal Revenue Code. The limitations apply if an ownership change, as defined by Section 382, occurs. Generally, an ownership change occurs when certain stockholders increase their aggregate ownership by more than 50 percentage points over their lowest ownership percentage in a testing period (typically three years). Additionally, United States tax laws limit the time during which these carryforwards may be utilized against future taxes. As a result, we may not be able to take full advantage of these carryforwards for federal and state tax purposes. Future changes in stock ownership may also trigger an ownership change and, consequently, a Section 382 limitation.

The recently passed comprehensive federal tax reform bill could adversely affect our business and financial condition.

On December 22, 2017, President Trump signed into law the TCJA, which significantly reformed the Internal Revenue Code of 1986, as amended, or the Code. The TCJA, among other things, contains significant changes to corporate taxation, including the reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%, the limitation of the tax deduction for interest expense to 30% of adjusted earnings (except for certain small businesses), the limitation of the deduction for net operating losses to 80% of current year taxable income and the elimination of net operating loss carrybacks and modification or repeal of many business deductions and credits (including the reduction of the business tax credit for certain clinical testing expenses incurred in the testing of certain drugs for rare diseases or conditions generally referred to as "orphan drugs"). We continue to examine the impact this tax reform legislation may have on our business. However, the effect of the TCJA on our business, whether adverse or favorable, is uncertain, and may not become evident for some period of time. We urge investors to consult with their legal and tax advisers regarding the implications of the TCJA on an investment in our Common Stock.

Global economic and market conditions may adversely affect our business, financial condition and operating results.

Our business plan depends significantly on worldwide economic conditions and our success is dependent on consumer spending, which is sensitive to economic downturns, inflation and any associated rise in unemployment, decline in consumer confidence, adverse changes in exchange rates, increase in interest rates, increase in the price of oil, deflation, direct or indirect taxes or increase in consumer debt levels. As a result, economic downturns may have a material adverse impact on our business, financial condition and results of operations. Moreover, uncertainty about global economic conditions poses a risk as businesses and individuals may postpone spending in response to tighter credit, negative financial news and declines in income or asset values. This could have a negative effect on corporate and individual spending on health and wellness and travel. These factors, taken together or individually, could cause material harm to our business, financial condition and results of operations.

Risks Related to our Business Operations

XpresSpa is reliant on international and domestic airplane travel, and the time that airline passengers spend in United States airports post-security. A decrease in airline travel, a decrease in the desire of customers to buy spa services and products, or decreased time spent in airports would negatively impact XpresSpa's operations.

XpresSpa depends upon a large number of airplane travelers with the propensity for health and wellness, and in particular spa treatments and products, spending significant time post- security clearance check points.

If the number of airline travelers decreases, if the time that these travelers spend post-security decreases, and/or if travelers ability or willingness to pay for XpresSpa's products and services diminishes, this could have an adverse effect on XpresSpa's growth, business activities, cash flow, financial condition and results of operations. Some reasons for these events could include:

- terrorist activities (including cyber-attacks), pandemics and outbreaks of contagious diseases, such as the Zika or Ebola crises, impacting either domestic or international travel through airports where XpresSpa operates, causing fear of flying, flight cancellations, or an economic downturn, or any other event of a similar nature, even if not directly affecting the airline industry, may lead to a significant reduction in the number of airline passengers;

- a decrease in business spending that impacts business travel, such as a recession;

- a decrease in consumer spending that impacts leisure travel, such as a recession or a stock market downturn or a change in consumer lending regulations impacting available credit for leisure travel;

- an increase in airfare prices that impacts the willingness of air travelers to fly, such as an increase in oil prices or heightened taxation from federal or other aviation authorities;

- severe weather, ash clouds, airport closures, natural disasters, strikes or accidents (airplane or otherwise), causing travelers to decrease the amount that they fly and any of these events, or any other event of a similar nature, even if not directly affecting the airline industry, may lead to a significant reduction in the number of airline passengers;

- scientific studies that malign the use of spa services or the products used in spa services, such as the impact of certain chemicals and procedures on health and wellness; or

- streamlined security screening checkpoints, which could decrease the wait time at checkpoints and therefore the time air travelers budget for spending time at the airport.

Further, any disruption to, or suspension of services provided by, airlines and the travel industry as a result of financial difficulties, labor disputes, construction work, increased security, changes to regulations governing airlines, mergers and acquisitions in the airline industry and challenging economic conditions causing airlines to reduce flight schedules or increase the price of airline tickets could negatively affect the number of airline passengers.

Additionally, the threat of terrorism and governmental measures in response thereto, such as increased security measures, recent executive orders in the United States impacting entry into the United States and changing attitudes towards the environmental impacts of air travel may in each case reduce demand for air travel and, as a result, decrease airline passenger traffic at airports.

The effect that these factors would have on our business depends on their magnitude and duration, and a reduction in airline passenger numbers will result in a decrease in our sales and may have a materially adverse impact on our business, financial condition and results of operations.

Our success will depend in part on relationships with third parties. Any adverse changes in these relationships could adversely affect our business, financial condition, or results of operations.

Our success is dependent on our ability to maintain and renew our business relationships and to establish new business relationships. There can be no assurance that our management will be able to maintain such business relationships or enter into or maintain new business contracts and other business relationships, on acceptable terms, if at all. The failure to maintain important business relationships could have a material adverse effect on our business, financial condition, or results of operations.

We rely on a limited number of distributors and suppliers for certain of our products, and events outside our control may disrupt our supply chain, which could result in an inability to perform our obligations under our concession agreements and ultimately cause us to lose our concessions.

We rely on a small number of suppliers for our products. As a result, these distributors may have increased bargaining power and we may be required to accept less favorable purchasing terms. In the event of a dispute with a supplier or distributor, the delivery of a significant amount of merchandise may be delayed or cancelled, or we may be forced to purchase merchandise from other suppliers on less favorable terms. Such events could cause turnover to fall or costs to increase, adversely affecting our business, financial condition and results of operations. In particular, we have publicized our sale of certain brands of products in our stores – our failure to sell these brands may adversely affect our business.

Further, damage or disruption to our supply chain due to any of the following could impair our ability to sell our products: adverse weather conditions or natural disaster, government action, fire, terrorism, cyber-attacks, the outbreak or escalation of armed hostilities, pandemic, industrial accidents or other occupational health and safety issues, strikes and other labor disputes, customs or import restrictions or other reasons beyond our control or the control of our suppliers and business partners. Failure to take adequate steps to mitigate the likelihood or potential impact of such events, or to effectively manage such events if they occur, could adversely affect our business, financial condition and results of operations, as well as require additional resources to restore our supply chain.

XpresSpa's operating results may fluctuate significantly due to certain factors, some of which are beyond its control.

XpresSpa's operating results may fluctuate from period to period significantly because of several factors, including:

- the timing and size of new unit openings, particularly the launch of new terminals;
- passenger traffic and seasonality of air travel;
- changes in the price and availability of supplies;

- macroeconomic conditions, both nationally and locally;
- changes in consumer preferences and competitive conditions;
- expansion to new markets and new locations; and
- increases in infrastructure costs, including those costs associated with the build-out of new concession locations and renovating existing concession locations.

XpresSpa's operating results may fluctuate significantly as a result of the factors discussed above. Accordingly, results for any period are not necessarily indicative of results to be expected for any other period or for any year.

XpresSpa's expansion into new airports or off-airport locations may present increased risks due to its unfamiliarity with those areas.

XpresSpa's growth strategy depends upon expanding into markets where it has little or no meaningful operating experience. Those locations may have demographic characteristics, consumer tastes and discretionary spending patterns that are different from those in the markets where its existing operations are located. As a result, new airport terminal and/or off-airport operations may be less successful than existing concession locations in current airport terminals. XpresSpa may find it more difficult in new markets to hire, motivate and keep qualified employees who can project its vision, passion and culture. XpresSpa may also be unfamiliar with local laws, regulations and administrative procedures, including the procurement of spa services retail licenses, in new markets which could delay the build-out of new concession locations and prevent it from achieving its target revenues on a timely basis. Operations in new markets may also have lower average revenues or enplanements than in the markets where XpresSpa currently operates. Operations in new markets may also take longer to ramp up and reach expected sales and profit levels, and may never do so, thereby negatively affecting XpresSpa's results of operations.

XpresSpa's growth strategy is highly dependent on its ability to successfully identify and open new XpresSpa locations.

XpresSpa's growth strategy primarily contemplates expansion through procuring new XpresSpa locations and opening new XpresSpa stores and kiosks. Implementing this strategy depends on XpresSpa's ability to successfully identify new store locations. XpresSpa will also need to assess and mitigate the risk of any new store locations, to open the stores on favorable terms and to successfully integrate their operations with ours. XpresSpa may not be able to successfully identify opportunities that meet these criteria, or, if it does, XpresSpa may not be able to successfully negotiate and open new stores on a timely basis. If XpresSpa is unable to identify and open new locations in accordance with its operating plan, XpresSpa's revenue growth rate and financial performance may fall short of our expectations.

Our profitability depends on the number of airline passengers in the terminals in which we have concessions. Changes by airport authorities or airlines that lower the number of airline passengers in any of these terminals could affect our business, financial condition and results of operations.

The number of airline passengers that visit the terminals in which we have concessions is dependent in part on decisions made by airlines and airport authorities relating to flight arrivals and departures. A decrease in the number of flights and resulting decrease in airline passengers could result in fewer sales, which could lower our profitability and negatively impact our business, financial condition and results of operations. Concession agreements generally provide for a minimum annual guaranteed payment ("MAG") payable to the airport authority or landlord regardless of the amount of sales at the concession. Currently, the majority of our concession agreements provide for a MAG that is either a fixed dollar amount or an amount that is variable based upon the number of travelers using the airport or other location, retail space used, estimated sales, past results or other metrics. If there are fewer airline passengers than expected or if there is a decline in the sales per airline passenger at these facilities, we will nonetheless be required to pay the MAG or fixed rent and our business, financial condition and results of operations may be materially adversely affected.

Furthermore, the exit of an airline from a market or the bankruptcy of an airline could reduce the number of airline passengers in a terminal or airport where we operate and have a material adverse impact on our business, financial condition and results of operations.

We may not be able to execute our growth strategy to expand and integrate new concessions or future acquisitions into our business or remodel existing concessions. Any new concessions, future acquisitions or remodeling of existing concessions may divert management resources, result in unanticipated costs, or dilute the ownership of our stockholders.

Part of our growth strategy is to expand and remodel our existing facilities and to seek new concessions through tenders, direct negotiations or other acquisition opportunities. In this regard, our future growth will depend upon a number of factors, such as our ability to identify any such opportunities, structure a competitive proposal and obtain required financing and consummate an offer. Our growth strategy will also depend on factors that may not be within our control, such as the timing of any concession or acquisition opportunity.

We must also strategically identify which airport terminals and concession agreements to target based on numerous factors, such as airline passenger numbers, airport size, the type, location and quality of available concession space, level of anticipated competition within the terminal, potential future growth within the airport and terminal, rental structure, financial return and regulatory requirements. We cannot provide assurance that this strategy will be successful.

In addition, we may encounter difficulties integrating expanded or new concessions or any acquisitions. Such expanded or new concessions or acquisitions may not achieve anticipated turnover and earnings growth or synergies and cost savings. Delays in the commencement of new projects and the refurbishment of concessions can also affect our business. In addition, we will expend resources to remodel our concessions and may not be able to recoup these investments. A failure to grow successfully may materially adversely affect our business, financial condition and results of operations.

In particular, new concessions and acquisitions, and in some cases future expansions and remodeling of existing concessions, could pose numerous risks to our operations, including that we may:

- have difficulty integrating operations or personnel;
- incur substantial unanticipated integration costs;
- experience unexpected construction and development costs and project delays;
- face difficulties associated with securing required governmental approvals, permits and licenses (including construction permits) in a timely manner and responding effectively to any changes in federal, state or local laws and regulations that adversely affect our costs or ability to open new concessions;
- have challenges identifying and engaging local business partners to meet ACDBE requirements in concession agreements;
- not be able to obtain construction materials or labor at acceptable costs;
- face engineering or environmental problems associated with our new and existing facilities;
- experience significant diversion of management attention and financial resources from our existing operations in order to integrate expanded, new or acquired businesses, which could disrupt our ongoing business;
- lose key employees, particularly with respect to acquired or new operations;
- have difficulty retaining or developing acquired or new business customers;
- impair our existing business relationships with suppliers or other third parties as a result of acquisitions;
- fail to realize the potential cost savings or other financial benefits and/or the strategic benefits of acquisitions, new concessions or remodeling; and
- incur liabilities from the acquired businesses and we may not be successful in seeking indemnification for such liabilities.

In connection with acquisitions or other similar investments, we could incur debt or amortization expenses related to intangible assets, suffer asset impairments, assume liabilities or issue stock that would dilute the percentage of ownership of our then-current stockholders. We may not be able to complete acquisitions or integrate the operations, products, technologies or personnel gained through any such acquisition, which may have a materially adverse impact on our business, financial condition and results of operations.

If the estimates and assumptions we use to determine the size of our market are inaccurate, our future growth rate may be impacted.

Market opportunity estimates and growth forecasts are subject to uncertainty and are based on assumptions and estimates that may not prove to be accurate. The estimates and forecasts in this annual report relating to the size and expected growth of the travel retail market may prove to be inaccurate. Even if the market in which we compete meets our size estimates and forecasted growth, our business could fail to grow at similar rates, if at all. The principal assumptions relating to our market opportunity include projected growth in the travel retail market and our share of the market. If these assumptions prove inaccurate, our business, financial condition and results of operations could be adversely affected.

Our business requires substantial capital expenditures and we may not have access to the capital required to maintain and grow our operations.

Maintaining and expanding our operations in our existing and new retail locations is capital intensive. Specifically, the construction, redesign and maintenance of our retail space in airport terminals where we operate, technology costs, and compliance with applicable laws and regulations require substantial capital expenditures. We may require additional capital in the future to fund our operations and respond to potential strategic opportunities, such as investments, acquisitions and expansions.

We must continue to invest capital to maintain or to improve the success of our concessions and to meet refurbishment requirements in our concessions. Decisions to expand into new terminals could also affect our capital needs. Our actual capital expenditures in any year will vary depending on, among other things, the extent to which we are successful in renewing existing concessions and winning additional concession agreements.

We cannot provide assurance that we will be able to maintain our operating performance, generate sufficient cash flow, or have access to sufficient financing to continue our operations and development activities at or above our present levels, and we may be required to defer all or a portion of our capital expenditures. Our business, financial condition and results of operations may be materially adversely affected if we cannot make such capital expenditures.

XpresSpa currently relies on a skilled, licensed labor force to provide spa services, and the supply of this labor force is finite. If XpresSpa cannot hire adequate staff for its locations, it will not be able to operate.

As of March 15, 2019, XpresSpa had 517 full-time and 186 part-time employees in its locations. Excluding some dedicated retail staff, the majority of these employees are licensed to perform spa services, and hold such licenses as masseuses, nail technicians, aestheticians, barbers and master barbers. The demand for these licensed technicians has been increasing as more consumers gravitate to health and wellness treatments such as spa services. XpresSpa competes not only with other airport-based spa companies but with spa companies outside of the airport for this skilled labor force. In addition, all staff hired by XpresSpa must pass the background checks and security clearances necessary to work in airport locations. If XpresSpa is unable to attract and retain qualified staff to work in its airport locations, its ability to operate will be impacted negatively.

Our business is subject to various laws and regulations, and changes in such laws and regulations, or failure to comply with existing or future laws and regulations, could adversely affect us.

We are subject to various laws and regulations in the United States, Netherlands and United Arab Emirates that affect the operation of our concessions. The impact of current laws and regulations, the effect of changes in laws or regulations that impose additional requirements and the consequences of litigation relating to current or future laws and regulations, or our inability to respond effectively to significant regulatory or public policy issues, could increase our compliance and other costs of doing business and, therefore, have an adverse impact on our results of operations.

Failure to comply with the laws and regulatory requirements of governmental authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, certain laws may require us to expend significant funds to make modifications to our concessions in order to comply with applicable standards. Compliance with such laws and regulations can be costly and can increase our exposure to litigation or governmental investigations or proceedings.

XpresSpa's labor force could unionize, putting upward pressure on labor costs.

Currently, XpresSpa stores in two airports have a labor force which is unionized. Major players in labor organization, and in particular "Unite Here!" which represents approximately 45,000 employees in the airport concessions and airline catering industries, could target XpresSpa locations for its unionization efforts. In the event of the successful unionization of all of XpresSpa's labor force, XpresSpa would likely incur additional costs in the form of higher wages, more benefits such as vacation and sick leave, and potentially also higher health care insurance costs.

XpresSpa competes for new locations in airports and may not be able to secure new locations.

XpresSpa participates in the highly competitive and lucrative airport concessions industry, and as a result competes for retail leases with a variety of larger, better capitalized concessions companies as well as smaller, mid-tier and single unit operators. Frequently, an airport includes a spa concept within its retail product set and, in those instances, XpresSpa competes primarily with BeRelax, Terminal Getaway, Massage Bar and 10 Minute Manicure.

We may not be able to predict accurately or fulfill customer preferences or demands.

We derive a significant amount of our revenue from the sale of massage, cosmetic and luxury products which are subject to rapidly changing customer tastes. The availability of new products and changes in customer preferences has made it more difficult to predict sales demand for these types of products accurately. Our success depends in part on our ability to predict and respond to quickly changing consumer demands and preferences, and to translate market trends into appropriate merchandise offerings. Additionally, due to our limited sales space relative to other retailers, the proper selection of salable merchandise is an important factor in revenue generation. We cannot provide assurance that our merchandise selection will correspond to actual sales demand. If we are unable to predict or rapidly respond to sales demand or to changing styles or trends, or if we experience inventory shortfalls on popular merchandise, our revenue may be lower, which could have a materially adverse impact on our business, financial condition and results of operations.

XpresSpa's leases may be terminated, either for convenience by the landlord or as a result of an XpresSpa default.

XpresSpa has store locations and kiosks in a number of airports in which the landlord, with prior written notice to XpresSpa, can terminate XpresSpa's lease, including for convenience or as necessary for airport purposes or operations. If a landlord elects to terminate a lease at an airport, XpresSpa may have to shut down one or more store locations at that airport.

Additionally, XpresSpa leases have numerous provisions governing the operation of XpresSpa's stores. Violation of one or more of these provisions, even unintentionally, may result in the landlord finding that XpresSpa is in default of the lease. Violation of lease provisions may result in fines and, in some cases, termination of a lease.

XpresSpa's ability to operate depends on the traffic patterns of the terminals in which it operates, and the cessation or disruption of air traveler traffic in these terminals would negatively impact XpresSpa's addressable market.

XpresSpa depends on a high volume of air travelers in its terminals. It is possible that a terminal in which XpresSpa operates could become subject to a lower volume of air travelers, which would significantly impact traffic near and around XpresSpa locations and therefore its total addressable market. Lower volume in a terminal could be caused by:

- terminal construction that results in the temporary or permanent closure of a unit, or adversely impacts the volume or pattern of traffic flows within an airport;

- an airline utilizing an airport in which XpresSpa operates could abandon that airport or an individual terminal in favor of other airports or terminals, or because it is contracting operations; or

- adverse weather conditions could cause damage to the terminal or airport in which XpresSpa operates, resulting in the temporary or permanent closure of a unit.

We are dependent on our local partners.

Our local partners, including our ACDBE partners, maintain ownership interests in certain of our locations. Our participation in these operating entities differs from market to market. While the precise terms of each relationship vary, our local partners may have control over certain portions of the operations of these concessions. The stores are operated pursuant to the applicable joint venture agreement governing the relationship between us and our local partner. Generally, these agreements also provide that strategic decisions are to be made by a committee comprised of us and our local partner. These concessions involve risks that are different from the risks involved in operating a concession independently, and include the possibility that our local partners:

- are in a position to take action contrary to our instructions, our requests, our policies, our objectives or applicable laws;

- take actions that reduce our return on investment;

- go bankrupt or are otherwise unable to meet their capital contribution obligations;

- have economic or business interests or goals that are or become inconsistent with our business interests or goals; or

- take actions that harm our reputation or restrict our ability to run our business.

Failure to comply with minimum airport concession disadvantaged business enterprise participation goals and requirements could lead to lost business opportunities or the loss of existing business.

Pursuant to ACDBE participation requirements, XpresSpa is often required to meet, or use good faith efforts to meet, certain minimum ACDBE participation requirements when bidding on or submitting proposals for new concession contracts. If XpresSpa is unable to find and/or partner with an appropriate ACDBE, XpresSpa may lose opportunities to open new locations. In addition, a number of XpresSpa's existing leases contain minimum ACDBE participation requirements which require the ACDBE to own a significant portion of the business being operated under those leases. The level of ACDBE participation requirements may affect XpresSpa's profitability and/or its ability to meet financial forecasts.

Further, if XpresSpa fails to comply with the minimum ACDBE participation requirements, XpresSpa may be held responsible for a breach of contract, which could result in the termination of a lease and impairment of XpresSpa's ability to bid on or obtain future concession contracts. To the extent that XpresSpa leases are terminated and XpresSpa is required to shut down one or more store locations, there could be a material adverse impact to its business and results of operations.

Continued minimum wage increases would negatively impact XpresSpa's cost of labor.

XpresSpa compensates its licensed technicians via a formula that includes commissions. As a result, an increase in the minimum wage would increase XpresSpa's cost of labor and have an adverse impact on our business, financial condition and results of operations.

Information technology systems failure or disruption, or changes to information technology related to payment systems, could impact our day-to-day operations.

Our information technology systems are used to record and process transactions at our point-of-sale interfaces and to manage our operations. These systems provide information regarding most aspects of our financial and operational performance, statistical data about our customers, our sales transactions and our inventory management. Fire, natural disasters, power-loss, telecommunications failure, break-ins, terrorist attacks (including cyber-attacks), computer viruses, electronic intrusion attempts from both external and internal sources and similar events or disruptions may damage or impact our information technology systems at any time. These events could cause system interruption, delays or loss of critical data and could disrupt our acceptance and fulfillment of customer orders, as well as disrupt our operations and management. For example, although our point-of-sales systems are programmed to operate and process customer orders independently from the availability of our central data systems and even of the network, if a problem were to disable electronic payment systems in our stores, credit card payments would need to be processed manually, which could result in fewer transactions. Significant disruption to systems could have a material adverse impact on our business, financial condition and results of operations.

We also continually enhance or modify the technology used for our operations. We cannot be sure that any enhancements or other modifications we make to our operations will achieve the intended results or otherwise be of value to our customers. Future enhancements and modifications to our technology could consume considerable resources. We may be required to enhance our payment systems with new technology, which could require significant expenditures. If we are unable to maintain and enhance our technology to process transactions, we may experience a materially adverse impact on our business, financial condition and results of operations.

If XpresSpa is unable to protect its customers' credit card data and other personal information, XpresSpa could be exposed to data loss, litigation and liability, and its reputation could be significantly harmed.

Privacy protection is increasingly demanding, and the use of electronic payment methods and collection of other personal information, including order history, travel history and other preferences, exposes XpresSpa to increased risk of privacy and/or security breaches as well as other risks. The majority of XpresSpa's sales are by credit or debit cards. Additionally, XpresSpa collects and stores personal information from individuals, including its customers and employees.

In the future, XpresSpa may experience security breaches in which credit and debit card information or other personal information is stolen. Although XpresSpa uses secure private networks to transmit confidential information, third parties may have the technology or know-how to breach the security of the customer information transmitted in connection with credit and debit card sales, and its security measures and those of technology vendors may not effectively prohibit others from obtaining improper access to this information. The techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and are often difficult to detect for long periods of time, which may cause a breach to go undetected for an extensive period of time. Advances in computer and software capabilities, new tools, and other developments may increase the risk of such a breach. Further, the systems currently used for transmission and approval of electronic payment transactions, and the technology utilized in electronic payments themselves, all of which can put electronic payment at risk, are determined and controlled by the payment card industry, not by XpresSpa. In addition, contractors, or third parties with whom XpresSpa does business or to whom XpresSpa outsources business operations may attempt to circumvent its security measures in order to misappropriate such information and may purposefully or inadvertently cause a breach involving such information. If a person is able to circumvent XpresSpa's security measures or those of third parties, he or she could destroy or steal valuable information or disrupt XpresSpa's operations. XpresSpa may become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and XpresSpa may also be subject to lawsuits or other proceedings relating to these types of incidents. Any such claim or proceeding could cause XpresSpa to incur significant unplanned expenses, which could have an adverse effect on its business or results of operations. Further, adverse publicity resulting from these allegations could significantly harm its reputation and may have a material adverse effect on it. Although XpresSpa carries cyber liability insurance to protect against these risks, there can be no assurance that such insurance will provide adequate levels of coverage against all potential claims.

Negative social media regarding XpresSpa could result in decreased revenues and impact XpresSpa's ability to recruit workers.

XpresSpa's affinity among consumers is highly dependent on their positive feelings about the brand, its customer service and the range and quality of services and products that it offers. A negative customer experience that is posted to social media outlets and is distributed virally could tarnish XpresSpa's brand and its customers may opt to no longer engage with the brand.

XpresSpa employs people in multiple different jurisdictions, and the employment laws of those jurisdictions are subject to change. In addition, its services are regulated through government-issued operating licenses. Noncompliance with applicable laws could result in employee lawsuits or legal action taken by government authorities.

XpresSpa must comply with a variety of employment and business practices laws across the United States, Netherlands and United Arab Emirates. XpresSpa monitors the laws governing its activities, but in the event it does not become aware of a new regulation or fails to comply with a regulation, it could be subject to disciplinary action by governing bodies and potentially employee lawsuits.

XpresSpa is not currently cash flow positive and will depend on funding to open new locations. In the event that capital is unavailable, XpresSpa will not be able to open new locations.

Throughout its operating history, XpresSpa has not generated sufficient cash from operations to fund its new store development. As a result, it will be dependent upon additional funding for its new location growth until such time as it can produce enough cash to profitably fund its own location growth.

XpresSpa sources, develops and sells products that may result in product liability defense costs and product liability payments.

XpresSpa's products contain ingredients that are deemed to be safe by the United States Federal Drug Administration and the Federal Food, Drug and Cosmetics Act. However, there is no guarantee that these ingredients will not cause adverse health effects to some consumers given the wide range of ingredients and allergies amongst the general population. XpresSpa may face substantial product liability exposure for products it sells to the general public or that is uses in its services. Product liability claims, regardless of their merits, could be costly and divert management's attention, and adversely affect XpresSpa's reputation and the demand for its products and services. XpresSpa to date has not been named as a defendant in any product liability action.

We have commenced legal proceedings and/or licensing discussions with security, content distribution and/or telecommunications companies. We expect that licensing discussions may be time consuming and may either, absent any litigation we initiate, fail to lead to a license, or may result in litigations commenced by the potential licensee.

To license or otherwise monetize the patent assets that we own, we have commenced legal proceedings and/or attempted to commence licensing discussions with a number of companies, during the course of which we allege that such companies infringe one or more of our patents. The future viability of our licensing program is highly dependent on the outcome of these discussions, and there is a risk that we may be unable to achieve the results we desire from such negotiations and be forced either to accept minimal royalties or commence litigations against the alleged infringer. In addition, the recipients of our licensing overtures have substantially more resources than we do, which could make our licensing efforts more difficult. Furthermore, due to changes in the approach to patent laws around the world it has become much easier for potential licensees to commence proceedings to revoke or otherwise nullify our patents in lieu of engaging in bona fide licensing discussions. There is a real risk that any potential licensee we approach would rather commence proceedings to revoke our patents than engage in any licensing discussions whatsoever.

We anticipate that any legal proceedings could continue for several years. While we endeavor, where possible, to engage counsel on a full or partial contingency basis, proceedings may commence that fall outside of contingency arrangements with counsel and may require significant expenditures for legal fees and other expenses. Disputes regarding the assertion of patents and other intellectual property rights are highly complex and technical. Once initiated, we may be forced to litigate against other parties in addition to the originally named defendants. Our adversaries may allege defenses and/or file counterclaims for, among other things, revocation of our patents or file collateral litigations in an effort to avoid or limit liability and damages for patent infringement. If such actions by our adversaries are successful, they may preclude our ability to derive licensing revenue from the patents being asserted.

There is a risk that we may be unable to achieve the results we desire from such litigation, which may harm our business. In addition, the defendants in these litigations have substantially more resources than we do, which could make our litigation efforts more difficult.

There is a risk that a court will find our patents invalid, not infringed or unenforceable and/or that the USPTO or other relevant patent offices in various countries will either invalidate the patents or materially narrow the scope of their claims during the course of a reexamination, opposition or other such proceeding. In addition, even with a positive trial court verdict, the patents may be invalidated, found not infringed or rendered unenforceable on appeal. This risk may occur either presently or from time to time in connection with future litigations we may bring.

Patent litigation is inherently risky and the outcome is uncertain. Some of the parties that we believe infringe on our patents are large and well-financed companies with substantially greater resources than ours. We believe that these parties may devote a substantial amount of resources in an attempt to avoid or limit a finding that they are liable for infringing on our patents or, in the event liability is found, to avoid or limit the amount of associated damages. In addition, there is a risk that these parties may file reexaminations or other proceedings with the USPTO or other government agencies in the United States or abroad in an attempt to invalidate, narrow the scope or render unenforceable the patents we own. In addition, as part of our ongoing legal proceedings, the validity and/or enforceability of our patents-in-suit is often challenged in a court or an administrative proceeding.

We may not be able to successfully monetize our patents and, thus, we may fail to realize all of the anticipated benefits of acquisitions from third parties.

There is no assurance that we will be able to successfully monetize the patent portfolios that we acquired from third parties. The patents we acquired could fail to produce anticipated benefits or could have other adverse effects that we currently do not foresee.

In addition, the acquisition of a patent portfolio is subject to a number of risks, including, but not limited to the following:

- There is a significant time lag between acquiring a patent portfolio and recognizing revenue from those patent assets, if at all. During that time lag, material costs are likely to be incurred that would have a negative effect on our results of operations, cash flows and financial position.

- The integration of a patent portfolio is a time consuming and expensive process that may disrupt our operations. If our integration efforts are not successful, our results of operations could be harmed. In addition, we may not achieve anticipated synergies or other benefits from such acquisition.

Therefore, there is no assurance that we will be able to monetize an acquired patent portfolio and recoup our investment.

We and our subsidiaries have been, are, and may become involved in litigation that could divert management's attention and harm our businesses.

Litigation often is expensive and diverts management's attention and resources, which could adversely affect our businesses. We may be exposed to claims against us even if no wrongdoing has occurred. Responding to such claims, regardless of their merit, can be time-consuming, costly to defend, disruptive to our management's attention and to our resources, damaging to our reputation and brand, and may cause us to incur significant expenses. Even if we are indemnified against such costs, the indemnifying party may be unable to uphold its contractual obligations.

New legislation, regulations or court rulings related to enforcing patents could harm our business and operating results.

Intellectual property is the subject of intense scrutiny by the courts, legislatures and executive branches of governments around the world. Various patent offices, governments or intergovernmental bodies may implement new legislation, regulations or rulings that impact the patent enforcement process or the rights of patent holders and such changes could negatively affect licensing efforts and/or litigations. For example, limitations on the ability to bring patent enforcement claims, limitations on potential liability for patent infringement, lower evidentiary standards for invalidating patents, increases in the cost to resolve patent disputes and other similar developments could negatively affect our ability to assert our patent or other intellectual property rights.

It is impossible to determine the extent of the impact of any new laws, regulations or initiatives that may be proposed, or whether any of the proposals will become enacted as laws. Compliance with any new or existing laws or regulations could be difficult and expensive, affect the manner in which we conduct our business and negatively impact our business, prospects, financial condition and results of operations.

Our failure or inability to protect the trademarks or other proprietary rights we use, or claims of infringement by us of rights of third parties, could adversely affect our competitive position or the value of our brands.

We believe that our trademarks and other proprietary rights are important to our success and our competitive position. However, any actions that we take to protect the intellectual property we use may not prevent unauthorized use or imitation by others, which could have an adverse impact on our image, brand or competitive position. If we commence litigation to protect our interests or enforce our rights, we could incur significant legal fees. We also cannot provide assurance that third parties will not claim infringement by us of their proprietary rights. Any such claim, whether or not it has merit, could be time consuming and distracting for our management, result in costly litigation, cause changes to existing retail concepts or delays in introducing retail concepts, or require us to enter into royalty or licensing agreements. As a result, any such claim could have a material adverse impact on our business, financial condition and results of operations.

Future acquisitions or business opportunities could involve unknown risks that could harm our business and adversely affect our financial condition and results of operations.

We have in the past, and may in the future, acquire businesses or make investments, directly or indirectly through our subsidiaries, that involve unknown risks, some of which will be particular to the industry in which the investment or acquisition targets operate, including risks in industries with which we are not familiar or experienced. Although we intend to conduct appropriate business, financial and legal due diligence in connection with the evaluation of future investment or acquisition opportunities, there can be no assurance that our due diligence investigations will identify every matter that could have a material adverse effect on us. We may be unable to adequately address the financial, legal and operational risks raised by such investments or acquisitions, especially if we are unfamiliar with the relevant industry. The realization of any unknown risks could expose us to unanticipated costs and liabilities and prevent or limit us from realizing the projected benefits of the investments or acquisitions, which could adversely affect our financial condition, liquidity, results of operations, and trading price.

Anti-takeover provisions of Delaware law, provisions in our charter and bylaws, and our stockholder rights plan could prevent or frustrate attempts by stockholders to change our Board of Directors or current management and could delay, discourage or make more difficult a third-party acquisition of control of us.

We are a Delaware corporation and, as such, certain provisions of Delaware law could prevent or frustrate attempts by stockholders to change the Board of Directors or current management, or could delay, discourage or make more difficult a third-party acquisition of control of us, even if the change in control would be beneficial to stockholders or the stockholders regard it as such. We are subject to the provisions of Section 203 of the Delaware General Corporation Law ("DGCL"), which prohibits certain "business combination" transactions (as defined in Section 203) with an "interested stockholder" (defined in Section 203 as a 15% or greater stockholder) for a period of three years after a stockholder becomes an "interested stockholder," unless the attaining of "interested stockholder" status or the transaction is pre-approved by our Board of Directors, the transaction results in the attainment of at least an 85% ownership level by an acquirer or the transaction is later approved by our Board of Directors and by our stockholders by at least a $66^{2}/_{3}$ percent vote of our stockholders other than the "interested stockholder," each as specifically provided in Section 203.

Our certificate of incorporation and our bylaws, each as currently in effect, also contain certain provisions that may delay, discourage or make more difficult a third-party acquisition of control of us. Such provisions include a provision that any vacancies on our Board of Directors may only be filled by a majority of the directors then serving, although not a quorum, and not by the stockholders and the ability of our Board of Directors to issue preferred stock, without stockholder approval, that could dilute the stock ownership of a potential unsolicited acquirer and hinder an acquisition of control of us that is not approved by our Board of Directors, including through the use of preferred stock in connection with a stockholder rights plan.

We have also adopted a stockholder rights plan in the form of a Section 382 Rights Plan, designed to help protect and preserve our substantial tax attributes primarily associated with our NOLs under Section 382 of the Internal Revenue Code and research tax credits under Sections 382 and 383 of the Internal Revenue Code and related United States Treasury regulations, which was approved by our stockholders in December 2016 and expires in March 2022. Although this is not the purpose of the Section 382 Rights Plan, it could have the effect of making it uneconomical for a third party to acquire us on a hostile basis.

These provisions of the DGCL, our certificate of incorporation and bylaws, and our Section 382 Rights Plan may delay, discourage or make more difficult certain types of transactions in which our stockholders might otherwise receive a premium for their shares over the current market price, and might limit the ability of our stockholders to approve transactions that they think may be in their best interest.

Our confidential information may be disclosed by other parties.

We routinely enter into non-disclosure agreements with other parties, including but not limited to vendors, law firms, parties with whom we are engaged in negotiations, and employees. However, there exists a risk that those other parties will not honor their contractual obligations to not disclose our confidential information. This may include parties who breach such obligations in the context of confidential settlement offers and/or negotiations. In addition, there exists a risk that, upon such breach and subsequent dissemination of our confidential information, third parties and potential licensees may seek to use such confidential information to their advantage and/or to our disadvantage including in legal proceedings in which we are involved. Our ability to act against such third parties may be limited, as we may not be in privity of contract with such third parties.

Risks Related to our Capital Stock

Stock prices can be volatile, and this volatility may depress the price of our Common Stock.

The stock market has experienced significant price and volume fluctuations, which have affected the market price of many companies in ways that may have been unrelated to those companies' operating performance. Furthermore, we believe that our stock price may reflect certain future growth and profitability expectations. If we fail to meet these expectations, then our stock price may significantly decline, which could have an adverse impact on investor confidence. We believe that various factors may cause the market price of our Common Stock to fluctuate, perhaps substantially, including, among others, the following:

- additions to or departures of our key personnel;
- announcements of innovations by us or our competitors;
- announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, capital commitments, or new technologies;
- new regulatory pronouncements and changes in regulatory guidelines;
- developments or disputes concerning our patents and efforts in licensing and/or enforcing our patents;
- lawsuits, claims, and investigations that may be filed against us, and other events that may adversely affect our reputation;
- changes in financial estimates or recommendations by securities analysts; and
- general and industry-specific economic conditions.

Future sales of our shares of Common Stock by our stockholders could cause the market price of our Common Stock to drop significantly, even if our business is otherwise performing well.

As of March 15, 2019, we have 1,932,326 shares of Common Stock issued and outstanding, excluding shares of Common Stock issuable upon exercise of warrants, options or restricted stock units, or preferred stock on an as-converted basis. As shares saleable under Rule 144 are sold or as restrictions on resale lapse, the market price of our Common Stock could drop significantly if the holders of shares of restricted stock sell them or are perceived by the market as intending to sell them. This decline in our stock price could occur even if our business is otherwise performing well.

Ownership of our Common Stock may be highly concentrated, and it may prevent our existing stockholders from influencing significant corporate decisions and may result in conflicts of interest that could cause our stock price to decline.

Our executive officers and directors beneficially own or control approximately 27% of our Common Stock on a fully diluted basis. Accordingly, these executive officers and directors, acting individually or as a group, have substantial influence over the outcome of a corporate action requiring stockholder approval, including the election of directors, any merger, consolidation or sale of all or substantially all of our assets or any other significant corporate transaction. These stockholders may also exert influence in delaying or preventing a change in control of us, even if such change in control would benefit our other stockholders. In addition, the significant concentration of stock ownership may adversely affect the market value of our Common Stock due to investors' perception that conflicts of interest may exist or arise.

The exercise of a substantial number of warrants or options by our security holders may have an adverse effect on the market price of our Common Stock.

Should our warrants outstanding as of March 15, 2019 be exercised, there would be an additional 703,669 shares of Common Stock eligible for trading in the public market. The incentive equity instruments granted to our management, employees, directors and consultants are subject to acceleration of vesting of 75% and 100% (according to the agreement signed with each grantee) upon a subsequent change of control. Such securities, if exercised, will increase the number of issued and outstanding shares of our Common Stock. Therefore, the sale of the shares of Common Stock underlying the warrants and options could have an adverse effect on the market price for our securities and/or on our ability to obtain future financing.

We have no current plans to pay dividends on our Common Stock, and our investors may not receive funds without selling their stock.

We have not declared or paid any cash dividends on our Common Stock, nor do we expect to pay any cash dividends on our Common Stock for the foreseeable future. Investors seeking cash dividends should not invest in our Common Stock for that purpose. We currently intend to retain any additional future earnings to finance our operations and growth and, therefore, we have no plans to pay cash dividends on our Common Stock at this time. Any future determination to pay cash dividends on our Common Stock will be at the discretion of our Board of Directors and will be dependent on our earnings, financial condition, operating results, capital requirements, any contractual restrictions, and other factors that our Board of Directors deems relevant.

Accordingly, our investors may have to sell some or all of their Common Stock in order to generate cash from their investment. You may not receive a gain on your investment when you sell our Common Stock and may lose the entire amount of your investment.

We may fail to meet publicly announced financial guidance or other expectations about our business, which would cause our stock to decline in value.

From time to time, we provide preliminary financial results or forward looking financial guidance, to our investors. Such statements are based on our current views, expectations and assumptions that may not prove to be accurate and may vary from actual results and involve known and unknown risks and uncertainties that may cause actual results, performance, achievements or share prices to be materially different from any future results, performance, achievements or share prices expressed or implied by such statements. Such risks and uncertainties include the risk factors contained herein. If we fail to meet our projections and/or other financial guidance for any reason, our stock price could decline.

The market price of our Common Stock historically has been and likely will continue to be highly volatile.

The market price for our shares of Common Stock historically has been highly volatile, and the market for our shares has from time to time experienced significant price and volume fluctuations, based both on our operating performance and for reasons that appear to be unrelated to our operating performance. The market price of our shares of Common Stock may fluctuate significantly in response to a number of factors, including:

- our ability to realize the expected value and benefits of our recent business and asset acquisitions;
- the level of our financial resources;
- our ability to develop and introduce new products and services;
- developments concerning our intellectual property rights generally or those of us or our competitors;
- our ability to raise additional capital to fund our operations and business plan and the effects that such financing may have on the value of the equity instruments held by our stockholders;
- our ability to retain key personnel;
- general economic conditions and level of consumer and corporate spending on health and wellness, and travel;
- our ability to hire a skilled labor force and the costs associated;
- our ability to secure new retail locations, maintain existing ones, and ensure continued customer traffic at those locations;
- changes in securities analysts' estimates of our financial performance or deviations in our business and the trading price of our Common Stock from the estimates of securities analysts;
- our ability to protect our customers' financial data and other personal information;
- the loss of one or more of our significant suppliers;
- unexpected trends in the health and wellness and travel industries and potential technology and service obsolescence;
- market acceptance, quality, pricing, availability and useful life of our products and/or services, as well as the mix of our products and services sold; and
- lawsuits, claims, and investigations that may be filed against us and other events that may adversely affect our reputation.

Our failure to meet the continued listing requirements of The Nasdaq Capital Market could result in a delisting of our Common Stock.

The continued listing standards of Nasdaq provide, among other things, that a company may be delisted if the bid price of its stock drops below $1.00 for a period of 30 consecutive business days or if stockholders' equity is less than $2.5 million. On March 16, 2018, we received a notification letter from The Nasdaq Stock Market informing us that for the last 30 consecutive business days, the bid price of our securities had closed below $1.00 per share, which is the minimum required closing bid price for continued listing on The Nasdaq Capital Market pursuant to Listing Rule 5550(a)(2). In order to regain compliance, on February 22, 2019, we filed a certificate of amendment to our amended and restated certificate of incorporation with the Secretary of State of the State of Delaware to effect a one-for-twenty reverse stock split of our outstanding shares of Common Stock. On March 11, 2019, we received a notification letter from The Nasdaq Stock Market informing us that we had regained compliance with Listing Rule 5550(a)(2).

While we have exercised diligent efforts to maintain the listing of our Common Stock on Nasdaq, there can be no assurance that we will be able to continue to meet the continuing listing requirements of The Nasdaq Capital Market. If we are unable to meet the continuing listing requirements, Nasdaq may take steps to delist our Common Stock. Such a delisting would likely have a negative effect on the price of our Common Stock and would impair your ability to sell or purchase our Common Stock when you wish to do so. Further, if we were to be delisted from The Nasdaq Capital Market, our Common Stock would cease to be recognized as covered securities and we would be subject to regulation in each state in which we offer our securities.

Delisting from Nasdaq could adversely affect our ability to raise additional financing through the public or private sale of equity securities, would significantly affect the ability of investors to trade our securities and would negatively affect the value and liquidity of our Common Stock. Delisting could also have other negative results, including the potential loss of confidence by employees, the loss of institutional investor interest and fewer business development opportunities.

Our Common Stock has traded in low volumes. We cannot predict whether an active trading market for our Common Stock will ever develop. Even if an active trading market develops, the market price of our Common Stock may be significantly volatile.

Historically, our Common Stock has experienced a lack of trading liquidity. In the absence of an active trading market you may have difficulty buying and selling our Common Stock at all or at the price you consider reasonable; and market visibility for shares of our Common Stock may be limited, which may have a depressive effect on the market price for shares of our Common Stock and on our ability to raise capital or make acquisitions by issuing our Common Stock.

If we raise additional capital in the future, stockholders' ownership in us could be diluted.

Any issuance of equity we may undertake in the future to raise additional capital could cause the price of our shares to decline or require us to issue shares at a price that is lower than that paid by holders of our shares in the past, which would result in previously issued shares being dilutive. If we obtain funds through a credit facility or through the issuance of debt or preferred securities, these securities would likely have rights senior to rights as a holder of Common Stock, which could impair the value of our shares.

If we exercise the option to repay the Series D preferred stock (the "Series D Preferred Stock") in Common Stock rather than cash, such repayment may result in the issuance of a large number of shares of Common Stock which may have a negative effect on the trading price of our Common Stock as well as a dilutive effect.

Pursuant to the terms of the shares of Series D Preferred Stock, on the seven-year anniversary of the initial issuance date of the shares of Series D Preferred Stock, December 23, 2023, we may repay each share of Series D Preferred Stock, at our option, in cash, by delivery of shares of Common Stock or through any combination thereof. If we elect to make a payment, or any portion thereof, in shares of Common Stock, the number of shares deliverable (the "Base Shares") will be based on the volume weighted average price per share of our Common Stock for the thirty trading days prior to the date of calculation (the "Base Price") plus an additional number of shares of Common Stock (the "Premium Shares"), calculated as follows: (i) if the Base Price is greater than $180.00, no Premium Shares shall be issued, (ii) if the Base Price is greater than $140.00 and equal to or less than $180.00, an additional number of shares equal to 5% of the Base Shares shall be issued, (iii) if the Base Price is greater than $120.00 and equal to or less than $140.00, an additional number of shares equal to 10% of the Base Shares shall be issued, (iv) if the Base Price is greater than $100.00 and equal to or less than $120.00, an additional number of shares equal to 20% of the Base Shares shall be issued and (v) if the Base Price is less than or equal to $100.00, an additional number of shares equal to 25% of the Base Shares shall be issued. Accordingly, if the volume weighted average price per share of our Common Stock is below $180.00 per share as of the time of repayment and we exercise the option to make such repayment in shares of our Common Stock, a large number of shares of our Common Stock may be issued to the holders of shares of Series D Preferred Stock upon maturity which may have a negative effect on the trading price of our Common Stock.

On December 23, 2023, upon the maturity of the Series D Preferred Stock, when determining whether to repay the Series D Preferred Stock in cash or shares of Common Stock, we expect to consider a number of factors, including our cash position, the price of our Common Stock and our capital structure at such time. Because we do not have to make a determination as to which option to elect until 2023, it is impossible to predict whether it is more or less likely to repay in cash, stock or a portion of each.

If we exercise the option to repay the Series E preferred stock (the "Series E Preferred Stock") in Common Stock rather than cash, such repayment may result in the issuance of a large number of shares of Common Stock which may have a negative effect on the trading price of our Common Stock as well as a dilutive effect.

Pursuant to the terms of the shares of Series E Preferred Stock, on the seven-year anniversary of the initial issuance date of the shares of Series E Preferred Stock, November 14, 2025 in the case the 3,225,806 shares of Series E Preferred Stock issued on November 14, 2018, December 28, 2025 in the case of the 322,581 shares of Series E Preferred Stock issued on December 28, 2018, we may repay each share of Series E Preferred Stock, at our option, in cash, by delivery of shares of Common Stock or through any combination thereof. If we elect to make a payment, or any portion thereof, in shares of Common Stock, the Base Shares will be based on the Base Price plus the Premium Shares, calculated as follows: (i) if the Base Price is greater than $180.00, no Premium Shares shall be issued, (ii) if the Base Price is greater than $140.00 and equal to or less than $180.00, an additional number of shares equal to 5% of the Base Shares shall be issued, (iii) if the Base Price is greater than $120.00 and equal to or less than $140.00, an additional number of shares equal to 10% of the Base Shares shall be issued, (iv) if the Base Price is greater than $100.00 and equal to or less than $120.00, an additional number of shares equal to 20% of the Base Shares shall be issued and (v) if the Base Price is less than or equal to $100.00, an additional number of shares equal to 25% of the Base Shares shall be issued. Accordingly, if the volume weighted average price per share of our Common Stock is below $180.00 per share as of the time of repayment and we exercise the option to make such repayment in shares of our Common Stock, a large number of shares of our Common Stock may be issued to the holders of shares of Series E Preferred Stock upon maturity which may have a negative effect on the trading price of our Common Stock.

On November 14, 2025 or December 28, 2025, as applicable, upon the maturity of the Series E Preferred Stock, when determining whether to repay the Series E Preferred Stock in cash or shares of Common Stock, we expect to consider a number of factors, including our cash position, the price of our Common Stock and our capital structure at such time. Because we do not have to make a determination as to which option to elect until 2023, it is impossible to predict whether it is more or less likely to repay in cash, stock or a portion of each.

Having availed ourselves of scaled disclosure available to smaller reporting companies, we cannot be certain if such reduced disclosure will make our Common Stock less attractive to investors.

Under Section 12b-2 of the Exchange Act, a "smaller reporting company" is a company that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a smaller reporting company, and has a public float of less than $250 million and annual revenues of less than $100 million during the most recently completed fiscal year. Similar to emerging growth companies, smaller reporting companies are permitted to provide simplified executive compensation disclosure in their filings; they are exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that independent registered public accounting firms provide an attestation report on the effectiveness of internal controls over financial reporting; and they have certain other decreased disclosure obligations in their SEC filings, including, among other things, only being required to provide two years of audited financial statements in annual reports. Decreased disclosure in our SEC filings as a result of our having availed ourselves of scaled disclosure may make it harder for investors to analyze our results of operations and financial prospects.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

As of December 31, 2018, XpresSpa had 56 company-operated stores in 23 airports, and one off-airport location in New York City, in the United States, Netherlands and United Arab Emirates. All of the stores as of that date were leased, typically with one or two renewal options after the initial term. Economic terms vary by type and location of store and, on average, the lease terms are 5-8 years with several stores operating on a month-to-month basis.

Our New York office, which serves as our corporate office, is located at 780 Third Avenue, 12th Floor, New York, New York. The annual rental fee for this space is approximately $409,000 and the lease expires in October 2019. We believe that our facility is adequate to accommodate our business needs.

ITEM 3. LEGAL PROCEEDINGS

Cordial

Effective October 2014, our wholly owned-subsidiary, XpresSpa, terminated its former ACDBE partner, Cordial Endeavor Concessions of Atlanta, LLC ("Cordial"), in its Atlanta Terminal A (and future Terminals D, E and F) store locations.

Cordial filed a series of complaints with the City of Atlanta, both before and after the termination, in which Cordial alleged, among other things, that the termination was not valid and that XpresSpa unlawfully retaliated against Cordial when Cordial raised concerns about the joint venture. In response to the numerous complaints it received from Cordial, the City of Atlanta required the parties to engage in two mediations.

After the termination of the relationship with Cordial, XpresSpa sought to substitute two new ACDBE partners in place of Cordial.

In April 2015, Cordial filed a complaint with the United States Federal Aviation Administration ("FAA"), which oversees the City of Atlanta with regard to airport ACDBE programs, and, in December 2015, the FAA instructed that the City of Atlanta review XpresSpa's request to substitute new partners in lieu of Cordial and Cordial's claims of retaliation. In response to the FAA instruction, pursuant to a corrective action plan approved by the FAA, the City of Atlanta held a hearing in February 2016 and ruled in favor of XpresSpa such substitution and claims of retaliation. Cordial submitted a further complaint to the FAA claiming that the City of Atlanta was biased against Cordial and that the City of Atlanta's decision was wrong. In August 2016, the parties met with the FAA. On October 4, 2016, the FAA sent a letter to the City of Atlanta directing that the City of Atlanta retract previous findings on Cordial's allegations and engage an independent third party to investigate issues previously decided by Atlanta. The FAA also directed that the City of Atlanta determine monies potentially due to Cordial.

On January 3, 2017, XpresSpa filed a lawsuit in the Supreme Court of the State of New York, County of New York, against Cordial and several related parties. The lawsuit alleges breach of contract, unjust enrichment, breach of fiduciary duty, fraudulent inducement, fraudulent concealment, tortious interference, and breach of good faith and fair dealing. XpresSpa is seeking damages, declaratory judgment, rescission/termination of certain agreements, disgorgement of revenue, fees and costs, and various other relief. On February 21, 2017, the defendants filed a motion to dismiss. On March 3, 2017, XpresSpa filed a first amended complaint against the defendants. On April 5, 2017, Cordial filed a motion to dismiss. On September 12, 2017, the Court held a hearing on the motion to dismiss. On November 2, 2017, the Court granted the motion to dismiss which was entered on November 13, 2017. On December 22, 2017, XpresSpa filed a notice of appeal, and on September 24, 2018, XpresSpa perfected its appellate rights and submitted a brief to the Supreme Court of New York, First Department appellate court. Oral arguments on the appeal are expected to take place in early 2019. Oral argument on the appeal went forward on March 20, 2019, and the court likely will rule in the coming months.

On March 30, 2018, Cordial filed a lawsuit against XpresSpa, a subsidiary of XpresSpa, and several additional parties in the Superior Court of Fulton County, Georgia, alleging the violation of Cordial's civil rights, tortious interference, breach of fiduciary duty, civil conspiracy, conversion, retaliation, and unjust enrichment. Cordial has threated to seek punitive damages, attorneys' fees and litigation expenses, accounting, indemnification, and declaratory judgment as to the status of the membership interests of XpresSpa and Cordial in the joint venture and Cordial's right to profit distributions and management fees from the joint venture. On May 3, 2018, the Court issued an order extending the time for the defendants to respond to Cordial's lawsuit until June 25, 2018. On May 4, 2018, the defendants moved the lawsuit to the United States District Court for the Northern District of Georgia. On June 5, 2018, the Court granted an extension of time for the defendants' response until August 17, 2018. On August 9, 2018, the Court granted an additional extension of time for the defendants' response until September 7, 2018, and thereafter provided another extension pending the Court's consideration of XpresSpa's Motion to Stay all action in the Georgia lawsuit, pending resolution of the New York lawsuit and the FAA action. On October 29, 2018, XpresSpa's Motion to Stay was denied. Prior to resolution of the Motion to Stay, Cordial filed a Motion for Temporary Restraining Order ("TRO Motion"), seeking to enjoin the defendants and specifically XpresSpa, from, among other things, distributing any cash flow, net profits, or management fees, or otherwise expending resources beyond necessary operation expenses. XpresSpa filed an opposition and, in a decision entered December 26, 2018, the Court denied Cordial's TRO Motion entirely. Defendants filed a Motion to Dismiss the Complaint in its entirety on November 20, 2018, which is pending decision by the Court.

In re Chen et al.

In March 2015, four former XpresSpa employees who worked at XpresSpa locations in John F. Kennedy International Airport and LaGuardia Airport filed a putative class and collective action wage-hour litigation in the United States District Court, Eastern District of New York. *In re Chen et al.*, CV 15-1347 (E.D.N.Y.). Plaintiffs claim that they and other spa technicians around the country were misclassified as exempt commissioned salespersons under Section 7(i) of the federal Fair Labor Standards Act ("FLSA"). Plaintiffs also assert class claims for unpaid overtime on behalf of New York spa technicians under the New York Labor Law, and discriminatory employment practices under New York State and City laws. On July 1, 2015, the plaintiffs moved to have the court authorize notice of the FLSA misclassification claim sent to all employees in the spa technician job classification at XpresSpa locations around the country in the last three years. Defendants opposed the motion. On February 16, 2016, the Magistrate Judge assigned to the case issued a Report & Recommendation, recommending that the District Court Judge grant the plaintiffs' motion. On March 1, 2016, the defendants filed Opposition to the Magistrate Judge's Report & Recommendation, arguing that the District Court Judge should reject the Magistrate Judge's findings. On September 23, 2016, the court ruled in favor of the plaintiffs and conditionally certified the class. The parties held a mediation on February 28, 2017 and reached an agreement on a settlement in principle. On September 6, 2017, the parties entered into a settlement agreement. On September 15, 2017, the parties filed a motion for settlement approval with the Court. XpresSpa subsequently paid the agreed-upon settlement amount to the settlement claims administrator to be held in escrow pending a fairness hearing and final approval by the Court. On March 30, 2018, the Court entered a Memorandum and Order denying the motion without prejudice to renewal due to questions and concerns the Court had about certain settlement terms. On April 24, 2018, the parties jointly submitted a supplemental letter to the Court advocating for the fairness and adequacy of the settlement, and appeared in Court on April 25, 2018 for a hearing to discuss the settlement terms in greater detail with the assigned Magistrate Judge. At the conclusion of the hearing, the Court still had questions about the adequacy and fairness of the settlement terms, and the Judge asked that the parties jointly submit additional information to the Court addressing the open issues. The parties submitted such information to the Court on May 18, 2018 and are awaiting the Court's ruling on the open issues.

Binn v. FORM Holdings Corp. et al.

On November 6, 2017, Moreton Binn and Marisol F, LLC, former stockholders of XpresSpa, filed a lawsuit against the Company and its directors in the United States District Court for the Southern District of New York. The lawsuit alleged violations of various sections of the Securities Exchange Act of 1934 ("Exchange Act"), material omissions and misrepresentations (negligent and fraudulent), fraudulent omission, expropriation, breach of fiduciary duties, aiding and abetting, and unjust enrichment in the defendants' conduct related to the Company's acquisition of XpresSpa, and sought rescission of the transaction, damages, equitable and injunctive relief, fees and costs, and various other relief. On January 17, 2018, the defendants filed a motion to dismiss the complaint. On February 7, 2018, the plaintiffs amended their complaint. On February 28, 2018, the defendants filed a motion to dismiss the amended complaint. By March 30, 2018, the motion to dismiss was fully briefed. On August 7, 2018, the Court ruled on the defendants' motion, dismissing eight of the plaintiffs' ten claims and denying the defendants' motion to dismiss with respect to the two remaining claims, related to the Exchange Act. On October 30, 2018, the Court ordered that the plaintiffs could file an amended complaint and, in response, the defendants could move for summary judgment. Consistent with the Court's Order, on November 16, 2018, the plaintiffs filed a second amended complaint, modifying their allegations, and asserting claims pursuant to the Exchange Act, the Securities Act of 1933, and bringing a breach of contract claim. On December 17, 2018, the defendants filed a motion for summary judgment seeking dismissal of all claims. On February 1, 2019, the plaintiffs filed an opposition to defendants' motion and filed a counter motion for partial summary judgment concerning one of the alleged misstatements. The defendants' motion for summary judgment was fully briefed as of March 1, 2019. The plaintiffs' partial motion for summary judgment was fully briefed as of March 15, 2019.

Krainz v. FORM Holdings Corp. et al.

On March 20, 2019, a second suit was commenced in the United States District Court for the Southern District of New York against FORM Holdings Corp., seven of its directors and former directors, as well as a managing director of Mistral Equity Partners. The individual plaintiff, Roman Kainz, who was a shareholder of XpresSpa Holdings, LLC at the time of its merger with FORM Holdings Corp, alleges that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 by making false statements concerning, *inter alia*, the merger and the independence of FORM Holdings Corp.'s board of directors, violated Section 12(2) of the Securities Act of 1933, breached the Merger Agreement by making false and misleading statements concerning the merger, and fraudulently induced Plaintiff into signing the joinder agreement related to the Merger. This suit seeks rescission of the transaction, damages, equitable and injunctive relief, fees and costs, and various other relief.

Route1

On May 23, 2018, Route1 and Group Mobile filed a Statement of Claim against the Company in the Ontario (Canada) Superior Court of Justice seeking monetary damages based on indemnity claims made by Route1 and Group Mobile pursuant to the Group Mobile Purchase Agreement, including an offset against funds payable to the Company by Route1 and Group Mobile pursuant to the Group Mobile Purchase Agreement. On August 13, 2018, the Company filed its Defense and Counterclaim, seeking the payment of such funds payable to the Company by Route1 and Group Mobile pursuant to the Group Mobile Purchase Agreement.

Rodger Jenkins v. XpresSpa Group, Inc.

In March 2019, Rodger Jenkins filed a lawsuit against the Company in the United States District Court for the Southern District of New York. The lawsuit alleges breach of contract of the stock purchase agreement related to the Company's acquisition of Excalibur Integrated Systems, Inc. and seeks specific performance, compensatory damages and other fees, expenses and costs.

Intellectual Property

The Company is engaged in litigation related to certain of the intellectual property that it owns, for which no liability is recorded, as the Company does not expect a material negative outcome.

In addition to those matters specifically set forth herein, the Company and its subsidiaries are involved in various other claims and legal actions that arise in the ordinary course of business. The Company does not believe that the ultimate resolution of these actions will have a material adverse effect on the Company's financial position, results of operations, liquidity, or capital resources. However, a significant increase in the number of these claims, or one or more successful claims under which the Company incurs greater liabilities than the Company currently anticipates, could materially adversely affect the Company's business, financial condition, results of operations and cash flows.

In the event that an action is brought against us or one of our subsidiaries, we will investigate the allegation and vigorously defend ourselves.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Our Common Stock, par value $0.01 per share, which was previously listed on the Nasdaq Capital Market under the trading symbol "FH," has been listed under the trading symbol "XSPA" since January 8, 2018.

In February 2019, the Company filed a certificate of amendment to its amended and restated certificate of incorporation with the Secretary of State of the State of Delaware to effect a 1-for-20 reverse stock split of shares of the Company's Common Stock, par value $0.01 per share.

Stockholders

As of March 15, 2019, we had 49 stockholders of record of the 1,932,326 outstanding shares of our Common Stock. This does not reflect persons or entities that hold their stock in nominee or "street" name through various brokerage firms.

Dividend Policy

We have never declared or paid any cash dividends on our capital stock, and do not anticipate paying any cash dividends on our capital stock in the foreseeable future. We currently intend to retain future earnings, if any, to finance our operations and to expand our business. Any future determination to pay cash dividends will be at the discretion of our Board of Directors and will be dependent upon our financial condition, operating results, capital requirements and other factors that our Board of Directors considers appropriate.

Issuer Purchases of Equity Securities

None.

Unregistered Sales of Equity Securities

On November 30, 2018, we issued 23,333 shares of our Common Stock to our outside law firm for partial payment of outstanding invoices for legal services. These securities were issued in reliance on the exemption from registration afforded by Section 4(a)(2) of the Securities Act.

ITEM 6. SELECTED FINANCIAL DATA

Not required as we are a smaller reporting company.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with, and is qualified in its entirety by, our consolidated financial statements (including notes to the consolidated financial statements) and the other consolidated financial information appearing elsewhere in this Annual Report on Form 10-K. In addition to historical financial information, the following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Some of the information contained in this discussion and analysis, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. Actual results and timing of events could differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

On January 5, 2018, we changed our name to XpresSpa Group, Inc. ("XpresSpa Group" or the "Company") from FORM Holdings Corp. Our Common Stock, par value $0.01 per share, which had previously been listed under the trading symbol "FH" on the Nasdaq Capital Market, has been listed under the trading symbol "XSPA" since January 8, 2018. Rebranding to XpresSpa Group aligned our corporate strategy to build a pure-play health and wellness services company, which we commenced following our acquisition of XpresSpa Holdings, LLC ("XpresSpa") on December 23, 2016.

As a result of the transition to a pure-play health and wellness services company, we currently have one operating segment that is also our sole reporting unit, XpresSpa, a leading airport retailer of spa services. XpresSpa is a well-recognized airport spa brand with 56 locations, consisting of 51 domestic and 5 international locations as of December 31, 2018. XpresSpa offers travelers premium spa services, including massage, nail and skin care, as well as spa and travel products. During 2018 and 2017, XpresSpa generated $49,294,000 and $48,373,000 of revenue, respectively. In 2018, approximately 83% of XpresSpa's total revenue was generated by services, primarily massage and nailcare, and 17% was generated by retail products, primarily travel accessories.

We own certain patent portfolios, which we look to monetize through sales and licensing agreements. During the year ended December 31, 2018, we determined that our former intellectual property operating segment would no longer be an area of focus and, as such, will no longer operate as a separate operating segment, as it is not expected to generate any material revenues or operating costs.

In October 2017, we completed the sale of FLI Charge, Inc. ("FLI Charge") and in March 2018, we completed the sale of Group Mobile Int'l LLC ("Group Mobile"). These two entities previously comprised our technology operating segment. The results of operations for FLI Charge and Group Mobile are presented in the consolidated statements of operations and comprehensive loss as consolidated net loss from discontinued operations. The carrying amounts of assets and liabilities belonging to Group Mobile as of December 31, 2018, and FLI Charge and Group Mobile as of December 31, 2017, are presented in the consolidated balance sheets as assets held for disposal and liabilities held for disposal, respectively.

Liquidity and Going Concern

As of December 31, 2018, we had approximately $3,403,000 of cash and cash equivalents, $2,247,000 of inventory and prepaid expenses and $109,000 of assets held for disposal, which amount to total current assets of $5,759,000. Our total current liabilities balance, which includes accounts payable, accrued expenses, debt, and the current portion of Convertible Notes, was $16,658,000 as of December 31, 2018. The working capital deficiency of $10,899,000 as of December 31, 2018 includes $1,986,000 of convertible notes classified as short-term for which principal repayments may be made in shares of Common Stock at our election. In addition, included in total current liabilities is approximately $1,742,000 which relates to obligations that will not settle in cash, and an additional $465,000 of liabilities that are not expected to settle in the next twelve months.

While we have aggressively reduced operating and overhead expenses, and while we continue to focus on our overall profitability, we have continued to generate negative cash flows from operations and we expect to incur net losses in the foreseeable future. As discussed above and elsewhere in this Annual Report on Form 10-K, the report of our independent registered public accounting firm on our financial statements for the years ended December 31, 2018 and 2017 includes an explanatory paragraph indicating that there is substantial doubt about our ability to continue as a going concern. The receipt of this explanatory paragraph with respect to our financial statements for the years ended December 31, 2018 and 2017 will result in a breach of a covenant under the Senior Secured Note which, if unremedied for a period of 30 days after the date hereof, will constitute an event of default under the Senior Secured Note. Upon the occurrence of an event of default under the Senior Secured Note, Rockmore may, among other things, declare the Senior Secured Note and all accrued and unpaid interest thereon and all other amounts owing under the Senior Secured Note to be due and payable. If the maturity date of the Senior Secured Note is accelerated as a result of the event of default referenced above, an event of default under the Convertible Notes would be triggered. If an event of default under the Convertible Notes occurs, the outstanding principal amount of the Convertible Notes, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the holder's election, immediately due and payable in cash.

We have taken actions to improve our overall cash position and access to liquidity by exploring valuable strategic partnerships, right-sizing our corporate structure, and stream-lining our operations. We expect that the actions taken in 2018 and early 2019 will enhance our liquidity and financial environment. In addition, we expect to generate additional liquidity through the monetization of certain investments and other assets. We expect that these actions will be executed in alignment with the anticipated timing of our liquidity needs. There can be no assurance, however, that any such opportunities will materialize.

Our historical operating results indicate that there is substantial doubt related to the Company's ability to continue as a going concern. We believe it is probable that the actions discussed above will transpire and will successfully mitigate the substantial doubt raised by our historical operating results and will satisfy our liquidity needs 12 months from the issuance of the financial statements. However, we cannot reasonably predict with any certainty that the results of our planned actions will generate the expected liquidity required to satisfy our liquidity needs.

If we continue to experience operating losses, and we are not able to generate additional liquidity through the actions described above or through some combination of other actions, while not expected, we may not be able to access additional funds and we might need to secure additional sources of funds, which may or may not be available to us. Additionally, a failure to generate additional liquidity could negatively impact our access to inventory or services that are important to the operation of our business.

Recent Developments

CEO Transition

On February 8, 2019, Edward Jankowski resigned as Chief Executive Officer of the Company and as a director of the Company. Mr. Jankowski's resignation was not as a result of any disagreement with the Company on any matters related to the Company's operations, policies or practices. Mr. Jankowski will receive termination benefits including $375,000 payable in equal installments over a twelve-month term commencing on February 13, 2019 and COBRA continuation coverage paid in full by the Company for up to a maximum of twelve months.

Effective as of February 11, 2019, Douglas Satzman was appointed by our board of directors as the Chief Executive Officer of the Company and as a director of the Company.

Reverse Stock Split

On February 22, 2019, we filed a certificate of amendment to our amended and restated certificate of incorporation with the Secretary of State of the State of Delaware to effect a 1-for-20 reverse stock split of our shares of Common Stock. Such amendment and ratio were previously approved by our stockholders and board of directors, respectively.

As a result of the reverse stock split, every twenty (20) shares of our pre-reverse split Common Stock were combined and reclassified into one (1) share of Common Stock. Proportionate voting rights and other rights of Common Stock holders were affected by the reverse stock split. Stockholders who would have otherwise held a fractional share of Common Stock received payment in cash in lieu of any such resulting fractional shares of Common Stock as the post-reverse split amounts of Common Stock were rounded down to the nearest full share. Such cash payment in lieu of a fractional share of Common Stock was calculated by multiplying such fractional interest in one share of Common Stock by the closing trading price of our Common Stock on February 22, 2019, and rounded to the nearest cent. No fractional shares were issued in connection with the reverse stock split.

Our Common Stock began trading on the Nasdaq Capital Market on a post-reverse split basis at the open of business on February 25, 2019.

Dispositions

On October 20, 2017, we sold FLI Charge to a group of private investors and FLI Charge management, who now own and operate FLI Charge. In February 2019, the Company entered into an agreement to release FLI Charge's obligation to pay any royalties on FLI Charge's perpetual gross revenues with regard to conductive wireless charging, power, or accessories, and to cancel its warrants exercisable in FLI Charge in exchange for cash proceeds of $1,100,000 which were received in full on February 15, 2019.

On March 22, 2018, we sold Group Mobile to a third party. We have not provided any continued management or financing support to FLI Charge or Group Mobile.

Rebranding

On January 5, 2018, we changed our name to XpresSpa Group, Inc. from FORM Holdings Corp, which aligned our corporate strategy to build a pure-play health and wellness services company. Our Common Stock, par value $0.01 per share, which had previously been listed under the trading symbol "FH" on the Nasdaq Capital Market, has been listed under the trading symbol "XSPA" since January 8, 2018.

Sale of Patents

In January 2018, we sold certain patents to Crypto Currency Patent Holdings Company LLC, a unit of Marathon Patent Group, Inc. ("Marathon"), for approximately $1,250,000, comprised of $250,000 in cash and 250,000 shares of Marathon Common Stock valued at approximately $1,000,000 (the "Marathon Common Stock") at the time of the transaction. The Marathon Common Stock was subject to a lockup period (the "Lockup Period") which commenced on the Transaction Date and ended on July 11, 2018, subject to a leak-out provision.

Collaboration Agreement

On November 12, 2018, we entered into a Product Sale and Marketing Agreement (the "Collaboration Agreement") with Calm.com, Inc. ("Calm") primarily related to the display, marketing, promotion, offer for sale and sale of Calm's products in each of our branded stores throughout the United States.

The Collaboration Agreement will remain in effect until July 31, 2019, unless terminated earlier in accordance with its terms, and automatically renew for successive terms of six months unless either party provides written notice of termination no later than thirty days prior to any such automatic renewal.

Financings

Secured Convertible Notes

On May 15, 2018, we entered into a securities purchase agreement (the "Securities Purchase Agreement") with certain institutional investors (the "Investors"), pursuant to which we agreed to sell up to (i) an aggregate principal amount of $4,438,000 in 5% Secured Convertible Notes due on November 16, 2019, which included $88,000 issued to Palladium Capital Advisors as Placement Agent (the "Convertible Notes"), convertible into shares of our Common Stock, par value $0.01 per share (the "Common Stock") at a conversion price of $12.40 per share, (ii) Class A Warrants (the "Class A Warrants") to purchase 357,862 shares of Common Stock at an exercise price of $12.40 per share and (iii) Class B Warrants (the "Class B Warrants," and together with the Class A Warrants, the "Warrants") to purchase 178,931 shares of Common Stock at an exercise price of $12.40 per share. The Convertible Notes bear interest at a rate of 5% per annum. The Convertible Notes are senior secured obligations of ours and are secured by certain of our personal property. Unless earlier converted or redeemed, the Convertible Notes will mature on November 16, 2019. The transaction closed on May 17, 2018, at which time we received $4,350,000 in gross proceeds from the Investors.

The principal amount of the outstanding Convertible Notes is to be repaid monthly in the amount of approximately $296,000, beginning on September 17, 2018, and we may make such payments and related interest payments in cash or, subject to certain conditions, in registered shares of our Common Stock (or a combination thereof), at our election. If we choose to repay the Convertible Notes in shares of our Common Stock, the shares will be issued at a 10% discount to the volume weighted average price of our Common Stock for the five (5) trading days commencing eight (8) days prior to the relevant repayment date and ending on the fourth (4^{th}) trading day prior to such repayment date, subject to a minimum floor price of not less than 20% of the conversion price of the Convertible Notes on the issue date. We may also repay the Convertible Notes in advance of the maturity schedule subject to an early repayment penalty of 15%.

On August 14, 2018, we entered into an Amendment Agreement ("Amendment Agreement") whereby the initial monthly principal repayment and accrued interest due on the Convertible Notes of $351,000 was settled in 103,350 shares of Common Stock on August 15, 2018. All other material terms of the Securities Purchase Agreement remained unchanged. During the year ended December 31, 2018, several of the Investors converted their monthly principal payments and accrued interest due on the Convertible Notes into shares of Common Stock pursuant to the Amendment Agreement, resulting in the issuance of an additional 377,109 shares of Common Stock.

On December 11, 2018, we entered into a Second Amendment Agreement ("Second Amendment Agreement") whereby each Holder waived the Company's obligation to make any Monthly Payments for the months of January, February and March 2019. Pursuant to the Second Amendment Agreement, each Holder was permitted to convert its pro-rata share of the Convertible Notes, at a conversion price of $4.00 per share of Common Stock, such that the maximum number of shares to be issued pursuant to this amendment shall not exceed 250,000 shares of Common Stock. All other material terms of the Securities Purchase Agreement remained unchanged. During the three-month period ended December 31, 2018, one of the Investors converted a portion of their allotted shares, in settlement of $23,000, into shares of Common Stock pursuant to the Second Amendment Agreement, resulting in the issuance of an additional 5,627 shares of Common Stock.

Series E Preferred Stock Financing

In connection with the entry into the Collaboration Agreement, we entered into a stock purchase agreement (the "Purchase Agreement") with Calm, pursuant to which we issued to Calm an aggregate of 32,258 shares of our newly designated Series E Convertible Preferred Stock, par value $0.01 per share (the "Series E Preferred Stock"), which are initially convertible into 161,290 shares of Common Stock, par value $0.01 per share, at a conversion price of $12.40 per share, subject to certain adjustments. The purchase price per share of the Series E Preferred Stock was $62.00 per share for gross proceeds to us of $2,000,000. In addition, on December 28, 2018, in satisfaction of the conditions under the Purchase Agreement, we sold, and Calm purchased, 16,129 additional shares of Series E Preferred Stock (the "Additional Series E Shares"), which are initially convertible into 80,645 shares of Common Stock at a conversion price of $12.40 per share, subject to certain adjustments, for gross proceeds to us of $1,000,000. The sale of Additional Series E Shares were on the same terms and conditions as those contained in the Purchase Agreement.

Our Strategy and Outlook

XpresSpa regularly measures comparable store sales, which it defines as current period sales from stores opened more than 12 months compared to those same stores' sales in the prior year period ("Comp Store Sales"). The measurement of Comp Store Sales on a daily, weekly, monthly, quarterly and year-to-date basis provides an additional perspective on XpresSpa's total sales growth when considering the influence of new unit contribution. A reconciliation between Comp Store Sales and total revenue as reported on the financial statements is presented below:

	2018			2017			%
	Comp Store	Non-Comp Store	Total	Comp Store	Non-Comp Store	Total	
Revenue	$ 42,653,000	$ 6,641,000	$ 49,294,000	$ 44,075,000	$ 4,298,000	$ 48,373,000	(3.2)%

Comp Store Sales decreased 3.2% during the year ended December 31, 2018 as compared to the same period in 2017. As of December 31, 2018, XpresSpa had 56 open locations; during the year, XpresSpa opened six new locations, and closed six underperforming locations.

We plan to grow XpresSpa by:

- continuing to focus on spa-level productivity and leveraging retail partnerships to increase units per transaction, which will contribute to the growth of the Comp Store Sales;
- through the opening of new locations; and
- through our franchising program, which was approved in January 2018, and for which we signed our first franchisee in November 2018 with our first franchise location scheduled to open in the spring of 2019.

Quarterly and Full-Year 2018 Adjusted EBITDA Loss

	Quarter-Ended				
	March 31	June 30	September 30	December 31	Total
Products and services revenue	$ 11,800,000	$ 13,038,000	$ 12,922,000	$ 11,534,000	$ 49,294,000
Cost of sales					
Labor	(6,210,000)	(6,490,000)	(5,997,000)	(5,672,000)	(24,369,000)
Occupancy	(2,060,000)	(2,160,000)	(1,996,000)	(1,902,000)	(8,118,000)
Product and other operating costs	(1,443,000)	(1,709,000)	(1,966,000)	(1,756,000)	(6,874,000)
Total cost of sales	(9,713,000)	(10,359,000)	(9,959,000)	(9,330,000)	(39,361,000)
Store margin	2,087,000	2,679,000	2,963,000	2,204,000	9,933,000
Store margin as a % of total revenue	17.7%	20.5%	22.9%	19.1%	20.2%
Depreciation and amortization					
Depreciation and impairment	(1,047,000)	(1,232,000)	(1,195,000)	(3,559,000)	(7,033,000)
Amortization	(606,000)	(611,000)	(684,000)	(564,000)	(2,465,000)
Goodwill impairment	(19,630,000)	—	—	—	(19,630,000)
Total depreciation and amortization	(21,283,000)	(1,843,000)	(1,879,000)	(4,123,000)	(29,128,000)
Total general and administrative	(4,596,000)	(3,904,000)	(3,943,000)	(3,797,000)	(16,240,000)
Other operating revenue and expense					
Other operating revenue	800,000	—	—	—	800,000
Other operating expense	(64,000)	—	(26,000)	—	(90,000)
Total other operating revenue, net	736,000	—	(26,000)	—	710,000
Operating loss from continuing operations	(23,056,000)	(3,068,000)	(2,885,000)	(5,716,000)	(34,725,000)
Plus:					
Depreciation and amortization	1,653,000	1,843,000	1,879,000	4,123,000	9,498,000
Goodwill impairment	19,630,000	—	—	—	19,630,000
One-time costs	—	605,000	452,000	961,000	2,018,000
Stock-based compensation expense	312,000	259,000	194,000	151,000	916,000
Adjusted EBITDA loss	$ (1,461,000)	$ (361,000)	$ (360,000)	$ (481,000)	$ (2,663,000)

One-time costs, which we do not expect to recur in future periods, relate to the following:

- professional fees of $1,309,000 related to certain consultants assisting with non-recurring projects;
- one-time project costs related to the buildout and implementation of a business analytics tool of $359,000; and
- severance costs of $350,000

During the year ended December 31, 2018, our Adjusted EBITDA loss decreased by $842,000 to $2,663,000 from $3,505,000 for the year ended December 31, 2017. The decrease was primarily attributable to management's efforts to right-size the corporate structure, streamline operations, and aggressively reduce operating and overhead expenses.

We use GAAP and non-GAAP measurements to assess the trends in our business. With respect to XpresSpa, we review its Adjusted EBITDA, a non-GAAP measure, which we define as earnings before interest, tax, depreciation and amortization expense, excluding merger and acquisition, integration and one-time costs and stock-based compensation.

Adjusted EBITDA is a supplemental measure of financial performance that is not required by, or presented in accordance with, GAAP. Reconciliations of operating loss from continuing operations for the Company for the year ended December 31, 2018 to Adjusted EBITDA loss are presented in the tables above.

We consider Adjusted EBITDA to be an important indicator for the performance of our business, but not a measure of performance or liquidity calculated in accordance with U.S. GAAP. We have included this non-GAAP financial measure because management utilizes this information for assessing our performance and liquidity, and as an indicator of our ability to make capital expenditures and finance working capital requirements. We believe that Adjusted EBITDA is a measurement that is commonly used by analysts and some investors in evaluating the performance and liquidity of companies such as us. In particular, we believe that it is useful for analysts and investors to understand this indicator because it excludes transactions not related to our core cash operating activities. We believe that excluding these transactions allows investors to meaningfully analyze the performance of our core cash operations. Adjusted EBITDA should not be considered in isolation or as an alternative to cash flow from operating activities or as an alternative to operating income or as an indicator of operating performance or any other measure of performance derived in accordance with GAAP. In evaluating our performance as measured by Adjusted EBITDA, we recognize and consider the limitations of this measurement. Adjusted EBITDA does not reflect our obligations for the payment of income taxes, interest expense, or other obligations such as capital expenditures. Accordingly, Adjusted EBITDA is only one of the measurements that management utilizes.

Results of Operations

Revenue

We recognize revenue from the sale of XpresSpa products and services at the point of sale, net of discounts and applicable sales taxes. Revenues from the XpresSpa wholesale and e-commerce businesses are recorded at the time goods are shipped. Accordingly, we recognize revenue for our single performance obligation related to both in-store and online sales at the point at which the service has been performed or the control of the merchandise has passed to the customer. We exclude all sales taxes assessed to our customers. Sales taxes assessed on revenues are included in accounts payable, accrued expenses and other current liabilities in the consolidated balance sheets until remitted to the state agencies.

We also have a franchise agreement with an unaffiliated franchisee to operate an XpresSpa location. We have identified the franchise right as a distinct performance obligation that transfers over time, and therefore any portion of the non-recurring initial franchise fee that is allocated to the franchise right should be recognized over the course of the contract rather than all upfront as would be the case with distinct performance obligations. Under our franchising model, all initial franchising fees relate to the franchise right and therefore are recognized over the course of the contract which commences upon signing of the agreement. Upon receipt of the non-recurring, non-refundable initial franchise fee, management records a deferred revenue asset and recognizes revenue on a straight-line basis over the contract term. As of December 31, 2018, there were no franchise royalty revenues as operations have not yet commenced. Once operations commence, franchise royalty revenue will be recorded in the period earned.

Other revenue relates to one-time intellectual property licenses as well as the sale of certain of our intellectual property. Revenue from patent licensing is recognized when we transfer promised intellectual property rights to purchasers in an amount that reflects the consideration to which we expect to be entitled in exchange for those intellectual property rights. Currently, revenue arrangements related to intellectual property provide for the payment of contractually determined fees and other consideration for the grant of certain intellectual property rights related to our patents. These rights typically include some combination of the following: (i) the grant of a non-exclusive, retroactive and future license to manufacture and/or sell products covered by patents, (ii) the release of the licensee from certain claims, and (iii) the dismissal of any pending litigation. The intellectual property rights granted typically extend until the expiration of the related patents. Pursuant to the terms of these agreements, we have no further obligation with respect to the grant of the non-exclusive retroactive and future licenses, covenants-not-to-sue, releases, and other deliverables, including no express or implied obligation on our part to maintain or upgrade the related technology, or provide future support or services. Generally, the agreements provide for the grant of the licenses, covenants-not-to-sue, releases, and other significant deliverables upon execution of the agreement, or upon receipt of the upfront payment. As such, the earnings process is complete and revenue is recognized upon the execution of the agreement, receipt of the upfront fee, and transfer of the promised intellectual property rights.

Cost of sales

Cost of sales consists of store-level costs. Store-level costs include all costs that are directly attributable to the store operations and include:

- payroll and related benefits for store operations and store-level management;
- rent, percentage rent and occupancy costs;
- the cost of merchandise;
- freight, shipping and handling costs;
- production costs;
- inventory shortage and valuation adjustments, including purchase price allocation increase in fair values which was recorded as part of acquisition; and
- costs associated with sourcing operations.

Cost of sales associated with revenue from intellectual property mainly includes expenses incurred in connection with the Company’s patent licensing and enforcement activities, patent-related legal expenses paid to external patent counsel (including contingent legal fees), licensing and enforcement related research, consulting and other expenses paid to third parties, as well as related internal payroll expenses.

Depreciation, amortization and impairment

Property and equipment is stated at cost, net of accumulated depreciation. Depreciation is calculated on a straight-line basis over the estimated useful lives of the assets. The useful lives of our property and equipment is based on estimates of the period over which we expect the assets to be of economic benefit to us. Leasehold improvements are amortized over the shorter of the useful life of the asset or the term of the lease.

Amortization of our intangible assets are recognized on a straight-line basis over the remaining useful life of the intangible assets. Impairment charges related to our intangible assets are recorded when an impairment indicator exists and the carrying amount of the related asset exceeds its fair value.

General and administrative

General and administrative expenses include management and administrative personnel, public and investor relations, overhead/office costs, insurance and various other professional fees, as well as sales and marketing costs and stock-based compensation for management and administrative personnel.

Non-operating income (expense)

Non-operating income (expense) includes transaction gains (losses) from foreign exchange rate differences, bank charges, deposits, interest related to outstanding debt, as well as fair value adjustments related to our derivative warrant liabilities. The value of these derivative warrant liabilities is highly influenced by assumptions used in its valuation, as well as by our stock price as of the period end (revaluation date).

Income taxes

On December 22, 2017, the United States government enacted comprehensive tax reform, commonly referred to as the Tax Cuts and Jobs Act of 2017 ("Tax Act"). The Tax Act made changes to the corporate tax rate, business-related deductions and taxation of foreign earnings, among other changes, that was effective for tax years beginning after December 31, 2017.

As of December 31, 2018, deferred tax assets generated from our activities in the United States were offset by a valuation allowance because realization depends on generating future taxable income, which, in our estimation, is not more likely than not to be generated before such net operating loss carryforwards expire.

Segment reporting

Operating segments are defined as components of an enterprise about which separate financial information is available that is regularly evaluated by the enterprise's Chief Operating Decision Maker ("CODM") in deciding how to allocate resources and in assessing performance. As a result of the Company's transition to a pure-play health and wellness services company, it currently has one operating segment that is also its sole reporting unit, XpresSpa.

The Company owns certain patent portfolios, which it looks to monetize through sales and licensing agreements. During the year ended December 31, 2018, the Company determined that its former intellectual property operating segment would no longer be an area of focus and, as such, will no longer operate as a separate operating segment, as it is not expected to generate any material revenues or operating costs.

Year ended December 31, 2018 compared to the year ended December 31, 2017

Revenue

	Year ended December 31,		
	2018	**2017**	**Change**
Products and services	$ 49,294,000	$ 48,373,000	$ 921,000
Other	800,000	450,000	350,000
Total revenue	$ 50,094,000	$ 48,823,000	$ 1,271,000

During the year ended December 31, 2018, we recorded total revenue of $50,094,000, which represents an increase of $921,000, or 1.9%, as compared to $48,823,000 recorded in the year ended December 31, 2017. The increase in revenue was mainly due to the timing of the opening of new XpresSpa locations during the fourth quarter of fiscal 2017 and the first three quarters of fiscal 2018. During 2018, we generated 83% of our revenues from services and 17% of our revenues from retail sales. We plan to grow XpresSpa's revenue through a combination of increases in sales at our existing XpresSpa locations and the addition of new locations.

Additionally, during the year ended December 31, 2018, we sold certain of our patents for consideration which included $250,000 and 250,000 shares of Common Stock in Marathon Patent Group, Inc. that were fair valued at $450,000. Also, in each twelve-month period ended December 31, 2018 and 2017, we entered into an executed confidential patent license agreement with a third-party for which we received a one-time lump sum payment of $100,000.

Cost of sales

	Year ended December 31,		
	2018	2017	Change
Cost of sales	$ 39,451,000	$ 38,986,000	$ 465,000

During the year ended December 31, 2018, we recorded total cost of sales of $39,451,000. The increase in cost of sales of $465,000, or 1.2%, was consistent with the increase in revenues, as we have experienced an increase in cost of sales associated with labor and occupancy due to the opening of new stores during the fourth quarter of 2017 and the first three quarters of fiscal 2018. Although we had 56 locations as of both December 31, 2018 and 2017, we had 57 locations as of September 30, 3018 compared to 51 locations as of September 30, 2017. The largest component in the cost of sales are labor costs at the store-level, as our associates receive commission-based compensation as well as additional incentives based on individual and store performance. Cost of sales also includes rent and related occupancy costs, which are also a percentage of sales, as well as product costs directly associated with the procurement of retail inventory and other operating costs.

The overall increase in cost of sales due to the opening of new stores was partially offset by initiatives taken to streamline processes and reduce store-level costs which included reduced warehousing and shipping charges as we completed the transition of inventory sourcing to our strategic partner in the first half of 2018.

Cost of sales is expected to grow over time as our revenues increase. We expect that total cost of sales as a percentage of revenues will decline gradually over time as a result of the store-level performance improvements which we continue to prioritize.

Depreciation, amortization, and impairment

	Year ended December 31,		
	2018	2017	Change
Depreciation and amortization	$ 9,498,000	$ 7,976,000	$ 1,522,000

During the year ended December 31, 2018, depreciation and amortization expense totaled $9,498,000, which represents an increase of $1,522,000, or 19.1%, compared to the depreciation and amortization expense recorded during the year ended December 31, 2017. The increase was primarily due to the depreciation expense related to the increase in the number of stores open during the year ended December 31, 2018 compared to the year ended December 31, 2017. Additionally, included in the depreciation expense for the year ended December 31, 2018 is a $2,100,000 expense for impairment of fixed assets in locations where we have obligations under long-term leases.

Goodwill impairment

	Year ended December 31,		
	2018	2017	Change
Goodwill impairment	$ 19,630,000	$ —	$ 19,630,000

During the year ended December 31, 2018, we recorded $19,630,000 of goodwill impairment expense. There was no goodwill impairment recorded during the year ended December 31, 2017.

On January 5, 2018, we changed our name to XpresSpa Group as part of a rebranding effort to align our corporate strategy to build a pure-play health and wellness services company, which we commenced following our acquisition of XpresSpa on December 23, 2016. Following the subsequent sale of Group Mobile on March 22, 2018, which was the only remaining component of our technology operating segment, our management made the decision that our intellectual property operating segment would no longer be an area of focus and would no longer operate as a separate operating segment as it is not expected to generate any material revenues. This completed our transition into a pure-play health and wellness company with only one operating segment, consisting of our XpresSpa business.

During the first quarter of fiscal year 2018, our stock price declined from an opening price of $27.20 on January 2, 2018 to $14.40 on March 29, 2018. Subsequently, on April 19, 2018, we entered into a separation agreement with our Chief Executive Officer regarding his resignation as Chief Executive Officer and as our Director.

These events were identified by our management as triggering events requiring that goodwill be tested for impairment as of March 31, 2018. In addition to our rebranding efforts to a pure-play health and wellness services company, our stock price continued to decline even after the announcement of the new Chief Executive Officer. As the stock price had not rebounded, we determined that the impairment related to the three-month period ended March 31, 2018.

We performed testing on the estimated fair value of goodwill and, as a result, we recorded an impairment charge of $19,630,000 to reduce the carrying value of goodwill to its fair value, which was determined to be zero.

The impairment to goodwill was a result of the structural changes to the Company, including completion of the transition from a holding company to a pure-play health and wellness company and the change in Executive Management.

General and administrative

	Year ended December 31,		
	2018	2017	Change
General and administrative	$ 16,240,000	$ 16,577,000	$ (337,000)

During the year ended December 31, 2018, general and administrative expenses decreased by $337,000, or 2.0%, to $16,240,000, compared to $16,577,000 that was recorded during the year ended December 31, 2017. This decrease is a result of streamlined processes at the corporate level to reduce administrative costs, as well as a reduction in stock-based compensation expense of $1,261,000 from $2,177,000 for the year ended December 31, 2017 to $916,000 for the year ended December 31, 2018. The overall decrease in general and administrative expenses was partially offset by severance costs of $350,000, one-time professional fees of $1,309,000, and one-time project costs of $359,000 related to the buildout and implementation of a business analytics tool, which we do not expect to recur in future periods.

Non-operating expense, net

	Year ended December 31,		
	2018	**2017**	**Change**
Non-operating expense, net	$ (1,184,000)	$ (1,285,000)	$ (101,000)

Net non-operating expenses include interest expense, gain or loss on the revaluation of derivative warrant liabilities and other non-operating income and expenses.

During the year ended December 31, 2018, we recorded net non-operating expense in the amount of $1,184,000 compared to net non-operating expense in the amount of $1,285,000 recorded during the year ended December 31, 2017.

For the year ended December 31, 2018, we recorded interest expense of $731,000 related to our outstanding indebtedness with Rockmore, amortization of debt discount, debt issuance costs, and interest on our Convertible Notes of $1,240,000, and other non-operating expenses of $734,000, which includes $148,000 of loss on impairment related to the cost method investment in Marathon. These non-operating expenses were offset by a gain of $1,521,000 on the revaluation of the derivative warrant liabilities that is reported as non-operating income.

The net non-operating expense of $1,285,000 during 2017 was mainly comprised of $731,000 of interest expense related to a credit agreement and secured promissory note (the “Debt”) with Rockmore Investment Master Fund Ltd. (“Rockmore”), $470,000 of finance expenses, and $309,000 of other non-operating expenses. The net non-operating expenses were reduced by a gain of $225,000 on the revaluation of our derivative warrant liabilities and other non-operating income items.

We expect that our non-operating income (expense) will remain highly volatile, and we may choose to fund our operations through additional financing. In particular, non-operating income (expense) will be affected by the adjustments to the fair value of our derivative instruments. Fair value of these derivative instruments depends on a variety of assumptions, such as estimations regarding triggering of down-round protection and estimated future share price. An estimated increase in the price of our Common Stock would increase the value of the warrants and thus result in a loss on our statements of operations.

Discontinued Operations

In October 2017, we completed the sale of FLI Charge and in March 2018, we completed the sale of Group Mobile. These two entities previously comprised our technology operating segment. The results of operations for FLI Charge and Group Mobile are presented in the consolidated statements of operations and comprehensive loss as consolidated net loss from discontinued operations. The discontinued operations had a loss $1,115,000 for the year ended December 31, 2018, a decrease of $11,162,000 from the loss of $12,277,000 for discontinued operations for the year ended December 31, 2017.

Taxes on Income

On December 22, 2017, the United States government enacted the Tax Act, which made changes to the corporate tax rate, business-related deductions and taxation of foreign earnings, among other changes, that were generally effective for tax years beginning after December 31, 2017.

As of December 31, 2018, our estimated aggregate total NOLs were $150,926,000 for U.S. federal purposes, expiring 20 years from the respective tax years to which they relate, and $23,139,000 for U.S. federal purposes with an indefinite life due to new regulations in the TCJA of 2017. The NOL amounts are presented before Internal Revenue Code, Section 382 limitations ("Section 382"). The Tax Reform Act of 1986 imposed substantial restrictions on the utilization of NOL and tax credits in the event of an ownership change of a corporation. Thus, our ability to utilize all such NOL and credit carryforwards may be limited. The NOLs available post-merger that we completed in 2012 that are not subject to limitation amount to $134,464,000. The remaining NOLs of $39,601,000 are subject to the limitation of Section 382. The annual limitation is approximately $2,000,000.

We did not have any material unrecognized tax benefits as of December 31, 2018. We do not expect to record any additional material provisions for unrecognized tax benefits within the next year.

Liquidity and Capital Resources

Our primary liquidity and capital requirements are for current and new XpresSpa locations. As of December 31, 2018, we had cash and cash equivalents of $3,403,000. We hold significant portions of our cash balance in overseas accounts, totaling $1,144,000, which is not insured by the Federal Deposit Insurance Corporation ("FDIC"). If we were to distribute the amounts held overseas, we would need to follow an approval and distribution process as it is defined in our operating and partnership agreements, which may delay and/or reduce the availability of our cash to us. Our total cash decreased by $2,965,000 from $6,368,000 as of December 31, 2017 to $3,403,000 as of December 31, 2018.

During the year ended December 31, 2018, we incurred $3,116,000 of capital expenditures, paid $320,000 in debt issuance costs associated with the Convertible Notes, paid $731,000 of interest on the Debt, distributed $1,636,000 to noncontrolling interests, and used $6,876,000 on our operations. This was offset by the receipt of $250,000 from the sale of patents in January 2018 and the receipt of $800,000 from a note receivable that was paid in full in February 2018, as well as the receipt of $4,350,000 in gross proceeds from the issuance of Convertible Notes in May 2018, and $3,000,000 in gross proceeds from the Series E Preferred Stock financing. We expect to utilize our cash and cash equivalents, along with cash flows from operations, to provide capital to support the growth of our business, primarily through opening new XpresSpa locations, maintaining our existing XpresSpa locations and supporting corporate functions.

As of December 31, 2018, we had approximately $3,403,000 of cash and cash equivalents, $2,247,000 of inventory and prepaid expenses and $109,000 of assets held for disposal, which amount to total current assets of $5,759,000. Our total current liabilities balance, which includes accounts payable, accrued expenses, debt, and the current portion of Convertible Notes, was $16,658,000 as of December 31, 2018. The working capital deficiency of $10,899,000 as of December 31, 2018 includes $1,986,000 of convertible notes classified as short-term liabilities for which principal repayments may be made in shares of Common Stock at our election, $1,742,000 which relates to obligations that will not settle in cash, and $465,000 of liabilities that are not expected to settle in the next twelve months.

While we have aggressively reduced operating and overhead expenses, and while we continue to focus on our overall profitability, we have continued to generate negative cash flows from operations and we expect to incur net losses in the foreseeable future. As discussed above and elsewhere in this Annual Report on Form 10-K, the report of our independent registered public accounting firm on our financial statements for the years ended December 31, 2018 and 2017 includes an explanatory paragraph indicating that there is substantial doubt about our ability to continue as a going concern. The receipt of this explanatory paragraph with respect to our financial statements for the years ended December 31, 2018 and 2017 will result in a breach of a covenant under the Senior Secured Note which, if unremedied for a period of 30 days after the date hereof, will constitute an event of default under the Senior Secured Note. Upon the occurrence of an event of default under the Senior Secured Note, Rockmore may, among other things, declare the Senior Secured Note and all accrued and unpaid interest thereon and all other amounts owing under the Senior Secured Note to be due and payable. If the maturity date of the Senior Secured Note is accelerated as a result of the event of default referenced above, an event of default under the Convertible Notes would be triggered. If an event of default under the Convertible Notes occurs, the outstanding principal amount of the Convertible Notes, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the holder’s election, immediately due and payable in cash.

We have taken actions to improve our overall cash position and access to liquidity by exploring valuable strategic partnerships, right-sizing our corporate structure, and stream-lining our operations. We expect that the actions taken in 2018 and early 2019 will enhance our liquidity and financial environment. In addition, we expect to generate additional liquidity through the monetization of certain investments and other assets. We expect that these actions will be executed in alignment with the anticipated timing of our liquidity needs. There can be no assurance, however, that any such opportunities will materialize.

Our historical operating results indicate that there is substantial doubt related to the Company's ability to continue as a going concern. We believe it is probable that the actions discussed above will transpire and will successfully mitigate the substantial doubt raised by our historical operating results and will satisfy our liquidity needs 12 months from the issuance of the financial statements. However, we cannot reasonably predict with any certainty that the results of our planned actions will generate the expected liquidity required to satisfy our liquidity needs.

If we continue to experience operating losses, and we are not able to generate additional liquidity through the actions described above or through some combination of other actions, while not expected, we may not be able to access additional funds and we might need to secure additional sources of funds, which may or may not be available to us. Additionally, a failure to generate additional liquidity could negatively impact our access to inventory or services that are important to the operation of our business.

Cash flows

	Year ended December 31,		
	2018	2017	Change
Net cash used in operating activities	$ (6,566,000)	$ (12,172,000)	$ 5,606,000
Net cash used in investing activities	$ (1,866,000)	$ (5,396,000)	$ 3,530,000
Net cash provided by financing activities	$ 5,644,000	$ 6,087,000	$ (443,000)

Operating activities

During the year ended December 31, 2018, net cash used in operating activities totaled $6,566,000, of which $8,067,000 was net cash used in continuing operations and $1,501,000 was net cash provided by our discontinued operations. During the year ended December 31, 2017, net cash used in operating activities totaled $12,172,000, of which $8,761,000 was net cash used in operating activities and $3,411,000 was net cash used in discontinued operations. The decrease of cash used in operating activities of $5,606,000 was due largely to our cost cutting measures and reduced cash used in our daily operations as we have continued to focus on right-sizing the corporate structure and reducing overhead and operating costs.

Investing activities

During the year ended December 31, 2018, net cash used in investing activities totaled $1,866,000, all of which was net cash used in continuing operations, mainly attributable to the net cash used to acquire property and equipment and software. This was primarily driven by capital expenditures for new store openings and renovations to existing stores. The net cash used was partially reduced by $800,000 received in January 2018 related to the sale of FLI Charge, $250,000 received from the sale of one of our patents, and $200,000 received from the sale of 205,646 shares of Marathon Common Stock.

During the year ended December 31, 2017, net cash used in investing activities totaled $5,396,000, of which $4,286,000 was net cash used in continuing operations and $1,110,000 was net cash used in our discontinued operations, mainly attributable to the net cash used to acquire property and equipment and software. This was driven by capital expenditures for store openings and renovations as well as systems enhancements at both the stores and corporate office. The net cash used was partially reduced by $250,000 received upon the sale of FLI Charge and $150,000 received from the sale of one of our patents.

We expect that net cash used in investing activities will increase as we intend to continue to open new stores and develop supporting infrastructure and systems.

Financing activities

During the year ended December 31, 2018, net cash provided by financing activities totaled $5,644,000, all of which was comprised of net cash provided by continuing operations. Included in the net cash provided by financing activities are the proceeds from the issuance of convertible notes and warrants of $4,350,000, which were partially offset by debt issuance costs of $320,000, and proceeds from the sale of our Series E Preferred Stock of $3,000,000. Also included in the net cash provided by financing activities are contributions of $250,000 from certain of XpresSpa's ACDBE partners, offset by distribution payments to XpresSpa's ACDBE partners of $1,636,000.

During the year ended December 31, 2017, net cash provided by financing activities totaled $6,087,000, which was comprised of $6,448,000 of net cash provided by continuing operations and $361,000 of net cash used in our discontinued operations. Included in the net cash provided by continuing operations are net proceeds of $6,584,000 received from the Offering in July and $316,000 from contributions made by certain of XpresSpa's ACDBE partners, offset by distribution payments to XpresSpa's ACDBE partners of $452,000.

A significant portion of our issued and outstanding warrants, for which the underlying shares of Common Stock held by non-affiliates are freely tradable, are currently "out-of-the-money." Therefore, the potential of additional incoming funds from exercises by our warrant holders is currently very limited. To the extent that any of our issued and outstanding warrants were "in-the-money," it could be used as a source of additional funding if the warrant holders choose to exercise their warrants for cash.

We may also choose to raise additional funds in connection with any acquisitions that we may pursue. There can be no assurance, however, that any such opportunity will materialize. Moreover, any such financing would most likely be dilutive to our current stockholders.

Off-Balance Sheet Arrangements

We have no obligations, assets or liabilities that would be considered off-balance sheet arrangements. We do not participate in transactions that create relationships with unconsolidated entities or financial partnerships, often referred to as variable interest entities, which would have been established for the purpose of facilitating off-balance sheet arrangements.

Critical Accounting Policies

While our significant accounting policies are more fully described in the notes to our audited consolidated financial statements for the year ended December 31, 2018, which appear elsewhere in this Annual Report on Form 10-K, we believe the following accounting policies to be the most critical in understanding the judgments and estimates we used in preparing our consolidated financial statements for the year ended December 31, 2018.

Revenue recognition

We recognize revenue from the sale of XpresSpa products and services at the point of sale, net of discounts and applicable sales taxes. Revenues from the XpresSpa wholesale and e-commerce businesses are recorded at the time goods are shipped. Accordingly, we recognize revenue for our single performance obligation related to both in-store and online sales at the point at which the service has been performed or the control of the merchandise has passed to the customer. We exclude all sales taxes assessed to our customers. Sales taxes assessed on revenues are included in accounts payable, accrued expenses and other current liabilities in the consolidated balance sheets until remitted to the state agencies.

We also have a franchise agreement with an unaffiliated franchisee to operate an XpresSpa location. We have identified the franchise right as a distinct performance obligation that transfers over time, and therefore any portion of the non-recurring initial franchise fee that is allocated to the franchise right should be recognized over the course of the contract rather than all upfront as would be the case with distinct performance obligations. Under our franchising model, all initial franchising fees relate to the franchise right and therefore are recognized over the course of the contract which commences upon signing of the agreement. Upon receipt of the non-recurring, non-refundable initial franchise fee, management records a deferred revenue asset and recognizes revenue on a straight-line basis over the contract term. As of December 31, 2018, there were no franchise royalty revenues as operations have not yet commenced. Once operations commence, franchise royalty revenue will be recorded in the period earned.

Other revenue relates to one-time intellectual property licenses as well as the sale of certain of our intellectual property. Revenue from patent licensing is recognized when we transfer promised intellectual property rights to customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those intellectual property rights. Currently, revenue arrangements related to intellectual property provide for the payment of contractually determined fees and other consideration for the grant of certain intellectual property rights related to our patents. These rights typically include some combination of the following: (i) the grant of a non-exclusive, retroactive and future license to manufacture and/or sell products covered by patents, (ii) the release of the licensee from certain claims, and (iii) the dismissal of any pending litigation. The intellectual property rights granted typically extend until the expiration of the related patents. Pursuant to the terms of these agreements, we have no further obligation with respect to the grant of the non-exclusive retroactive and future licenses, covenants-not-to-sue, releases, and other deliverables, including no express or implied obligation on our part to maintain or upgrade the related technology, or provide future support or services. Generally, the agreements provide for the grant of the licenses, covenants-not-to-sue, releases, and other significant deliverables upon execution of the agreement, or upon receipt of the upfront payment. As such, the earnings process is complete and revenue is recognized upon the execution of the agreement, receipt of the upfront fee, and transfer of the promised intellectual property rights.

Goodwill

Goodwill is an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized.

Goodwill is reviewed for impairment at least annually, and when triggering events occur, in accordance with the provisions of Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") *Topic 350, Intangibles – Goodwill and Other*. We evaluate goodwill impairment at the reporting unit level and perform our annual goodwill impairment test on December 31. We have adopted *ASU No. 2017-14, Intangibles – Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment* effective January 1, 2018. We have the option to perform a qualitative assessment to determine if an impairment is more likely than not to have occurred. If we can support the conclusion that it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, then we would not need to perform the quantitative impairment test for the reporting unit. If we cannot support such a conclusion or do not elect to perform the qualitative assessment, then the qualitative goodwill impairment test is used to identify potential impairment by comparing the fair value of the reporting unit with its carrying amount, including goodwill.

If the fair value of the reporting unit exceeds its carrying value, then the goodwill is not impaired. If the fair value of the reporting unit is less than its carrying value, an impairment charge will be recorded based on the excess of a reporting unit's carrying amount over its fair value. A significant amount of judgment is required in performing goodwill impairment tests including estimating the fair value of a reporting unit and the implied fair value of goodwill.

As of December 31, 2018, our goodwill was fully impaired. See *"Note 6. Intangible Assets and Goodwill"* for further details on the assessment and conclusion on the goodwill impairment recorded during the year ended December 31, 2018.

Intangible assets

Intangible assets include trade names, customer relationships, and technology, which were acquired as part of the acquisition of XpresSpa in December 2016 and are recorded based on the estimated fair value in purchase price allocation. Intangible assets also include purchased patents. The intangible assets are amortized over their estimated useful lives, which are periodically evaluated for reasonableness.

Our intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In assessing the recoverability of our intangible assets, we must make estimates and assumptions regarding future cash flows and other factors to determine the fair value of the respective assets. These estimates and assumptions could have a significant impact on whether an impairment charge is recognized and also the magnitude of any such charge. Fair value estimates are made at a specific point in time, based on relevant information. These estimates are subjective in nature and involve uncertainties and matters of significant judgments and therefore cannot be determined with precision. Changes in assumptions could significantly affect the estimates. If these estimates or material related assumptions change in the future, we may be required to record impairment charges related to its intangible assets.

Fair value measurements

Our derivative warrant liabilities are measured at fair value. Such liabilities are classified within Level 3 of the fair value hierarchy because they are valued using the Black-Scholes-Merton ("Black-Scholes") and the Monte-Carlo models (as these warrants include down-round protection clauses), which utilize significant inputs that are unobservable in the market. The inputs to estimate the fair value of our derivative warrant liabilities are the current market price of our Common Stock, the exercise price of the warrant, the warrants' remaining expected term, the volatility of our Common Stock price, our assumptions regarding the probability and timing of a down-round protection triggering event and the risk-free interest rate. The tables below illustrate the unobservable inputs estimated by management on the respective balance sheet dates:

May 2015 Warrants

December 31, 2018:

Description	Valuation technique	Unobservable inputs	Range
May 2015 Warrants	Black-Scholes-Merton	Volatility	71.16%
		Risk-free interest rate	2.49%
		Expected term, in years	1.34
		Dividend yield	0.00%

December 31, 2017:

Description	Valuation technique	Unobservable inputs	Range
May 2015 Warrants	Black-Scholes-Merton	Volatility	39.64%
		Risk free interest rate	1.88%
		Expected term, in years	2.34
		Dividend yield	0.00%

May 2018 Warrants

December 31, 2018:

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities –			
A Warrants	Black-Scholes-Merton	Volatility	70.61%
		Risk-free interest rate	2.53%
		Expected term, in years	4.38
		Dividend yield	0.00%

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities –			
B Warrants	Black-Scholes-Merton	Volatility	84.02%
		Risk-free interest rate	2.25%
		Expected term, in years	0.12
		Dividend yield	0.00%

May 17, 2018:

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities –			
A Warrants	Black-Scholes-Merton	Volatility	71.13%
		Risk-free interest rate	2.98%
		Expected term, in years	5.00
		Dividend yield	0.00%

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities –			
B Warrants	Black-Scholes-Merton	Volatility	72.88%
		Risk-free interest rate	1.99%
		Expected term, in years	0.50
		Dividend yield	0.00%

The fair value measurements of the derivative warrant liabilities are evaluated by management to ensure that changes are consistent with expectations of management based upon the sensitivity and nature of the related inputs. Significant changes in any of those inputs in isolation can result in a significant change in the fair value measurement. Generally, an increase in the market price of our Common Stock, an increase in the volatility of our Common Stock, an increase in the remaining term of the warrants, or an increase of a probability of a down-round triggering event would each result in a directionally similar change in the estimated fair value of our derivative warrant liabilities. Such changes would increase the associated liability while decreases in these assumptions would decrease the associated liability. An increase in the risk-free interest rate or a decrease in the positive differential between the warrants' exercise price and the market price of our Common Stock would result in a decrease in the estimated fair value measurement of the warrants and thus a decrease in the associated liability. We have not, and do not plan to, declare dividends on our Common Stock and, as such, there is no change in the estimated fair value of the derivative warrant liabilities due to the dividend assumption. Had we made different assumptions about the inputs noted above, the recorded gain or loss, our net loss and net loss per share amounts could have been significantly different.

Stock-based compensation

Stock-based compensation is recognized as an expense in the accompanying consolidated statements of operations and comprehensive loss and such cost is measured at the grant-date fair value of the equity-settled award. The fair value of stock options is estimated as of the date of grant using the Black-Scholes model. The expense is recognized on a straight-line basis over the requisite service period. We use the simplified method to estimate the expected term of options due to insufficient history and high turnover in the past. The contractual life of options granted under our 2006 and 2012 option plans are 6 and 10 years, respectively. Since our Company lacks sufficient history, expected volatility is estimated based on the average historical volatility of similar entities with publicly traded shares. The risk-free rate for the expected term of the option is based on the United States Treasury yield curve as of the date of grant.

Income taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided for the amount of deferred tax assets that, based on available evidence, are not more likely than not to be realized. Tax benefits related to excess deductions on stock-based compensation arrangements are recognized when they reduce taxes payable.

In assessing the need for a valuation allowance, we look at cumulative losses in recent years, estimates of future taxable earnings, feasibility of tax planning strategies, the ability to realize tax benefit carryforwards, and other relevant information. Valuation allowances related to deferred tax assets can be impacted by changes to tax laws, changes to statutory tax rates and future taxable earnings. Ultimately, the actual tax benefits to be realized will be based upon future taxable earnings levels, which are very difficult to predict. In the event that actual results differ from these estimates in future periods, we will be required to adjust the valuation allowance.

Significant judgment is required in evaluating our federal, state and foreign tax positions and in the determination of our tax provision. Despite management's belief that our liability for unrecognized tax benefits is adequate, it is often difficult to predict the final outcome or the timing of the resolution of any particular tax matters. We may adjust these accruals as relevant circumstances evolve, such as guidance from the relevant tax authority, our tax advisors, or resolution of issues in the courts. Our tax expense includes the impact of accrual provisions and changes to accruals that it considers appropriate. These adjustments are recognized as a component of income tax expense entirely in the period in which new information is available. We record interest related to unrecognized tax benefits in interest expense and penalties in the accompanying consolidated statements of operations and comprehensive loss as general and administrative expenses.

We recognize the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50 percent of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

On December 22, 2017, the United States government enacted the Tax Act, which made changes to the corporate tax rate, business-related deductions and taxation of foreign earnings, among other changes, that was generally effective for tax years beginning after December 31, 2017.

Segment reporting

Operating segments are defined as components of an enterprise about which separate financial information is available that is regularly evaluated by the enterprise's CODM in deciding how to allocate resources and in assessing performance. As a result of the Company's transition to a pure-play health and wellness services company, it currently has one operating segment that is also its sole reporting unit, XpresSpa.

The Company owns certain patent portfolios, which it looks to monetize through sales and licensing agreements. During the year ended December 31, 2018, the Company determined that its former intellectual property operating segment would no longer be an area of focus and, as such, will no longer operate as a separate operating segment, as it is not expected to generate any material revenues or operating costs.

Recently issued accounting pronouncements

ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606)
The core principle of this new standard is that revenue should be recognized to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. This guidance was amended in July 2015 and is effective for annual reporting periods beginning after December 15, 2017. Adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

ASU No. 2014-15, Presentation of Financial Statements — Going Concern, Disclosures of Uncertainties about an Entity's Ability to Continue as a Going Concern
This standard requires management to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued. Substantial doubt about an entity's ability to continue as a going concern exists when it is probable that the entity will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued. Management's evaluation should be based on relevant conditions and events that are known and reasonably knowable at the date that the financial statements are issued. The amendments in this Update are effective for the annual period beginning after December 15, 2016. See Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources" for management's assessment and conclusion for the year ended December 31, 2018.

ASU No. 2016-01, Financial Instruments – Overall (Topic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities
This standard amends various aspects of the recognition, measurement, presentation, and disclosure for financial instruments. With respect to the Company's consolidated financial statements, the most significant impact relates to the accounting for equity investments. It will impact the disclosure and presentation of financial assets and liabilities. The amendments in this update are effective for annual reporting periods, and interim periods within those years beginning after December 15, 2017. Adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

ASU No. 2016-02, Leases (Topic 842)
This standard provides new guidance related to accounting for leases and supersedes GAAP on lease accounting with the intent to increase transparency. This standard requires operating leases to be recorded on the balance sheet as assets and liabilities and requires disclosure of key information about leasing arrangements. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statement of operations and comprehensive loss.

In 2016, FASB issued ASU 2016-02, Leases, and several amendments (collectively, "ASU 2016-02"), which requires the Company to recognize assets and liabilities arising from most operating leases on the consolidated statements of financial condition. In 2018, the FASB issued ASU 2018-11, Targeted Improvements ("ASU 2018-11"), which provides a transition option to not apply the new lease standard to the comparative periods presented in the consolidated statements of financial condition. Under this transition option, the Company shall apply the new leases standard at the adoption date and recognizes any cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption.

The Company adopted ASU 2016-02 effective for the fiscal year beginning after December 15, 2018 on a modified retrospective basis. The Company applied the transition option permitted by ASU 2018-11 and elected the package of practical expedients to alleviate certain operational and reporting complexities related to the adoption. The Company expects to recognize right-of-use assets and lease liabilities in the range of $10 million to $12 million for its current operating leases upon adoption of ASU 2016-02 and does not expect the adoption to have a material impact on its results of operations or cash flows.

ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments
This standard changes the impairment model for most financial assets that are measured at amortized cost and certain other instruments, including trade receivables, from an incurred loss model to an expected loss model and adds certain new required disclosures. Under the expected loss model, entities will recognize estimated credit losses to be incurred over the entire contractual term of the instrument rather than delaying recognition of credit losses until it is probable the loss has been incurred. The new standard is effective for the fiscal year beginning after December 15, 2019, with early adoption permitted. The Company is currently in the process of evaluating the potential impact of the adoption on its consolidated financial statements.

ASU No. 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts, Cash Payments, and Restricted Stock
This standard provides new guidance to help clarify whether certain items should be categorized as operating, investing, or financing in the statement of cash flows. This ASU No. 2016-15 provides guidance on eight specific cash flow issues. The new standard is effective for the fiscal year beginning after December 15, 2017, with early adoption permitted. Adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

ASU No. 2016-18, Statement of Cash Flows (Topic 230): Restricted Cash
This amendment clarifies the classification and presentation of restricted cash in the consolidated statement of cash flows under Topic 230. In addition to providing explanation on the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. The new standard is effective for the fiscal year beginning after December 15, 2017, with early adoption permitted. We adopted ASU 2016-18 effective January 1, 2018. As a result of the adoption of ASU 2016-18, in the consolidated statement of cash flows for the year ended December 31, 2018, we reclassified $487 of restricted cash.

ASU No. 2017-09, Stock Compensation (Topic 718): Scope of Modification Accounting
This standard provides guidance about which changes to the terms or conditions of a stock-based payment award require an entity to apply modification accounting in Topic 718. The current disclosure requirements in Topic 718 apply regardless of whether an entity is required to apply modification accounting under the amendments in this update. ASU 2017-09 is effective for annual periods, and interim periods within those annual periods, beginning after December 15, 2017; early adoption is permitted. Adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

ASU No. 2017-11, Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815)
This standard provides new guidance to address the complexity of accounting for certain financial instruments with down round features. The amendments of this ASU change the classification analysis of certain equity-linked financial instruments (or embedded features) with down round features. A down round feature no longer precludes equity classification when assessing whether the instrument is indexed to an entity's own stock. A freestanding equity-linked financial instrument (or embedded conversion feature) no longer would be accounted for as a derivative liability at fair value as a result of the existence of a down round feature. The new standard is effective for the fiscal year beginning after December 15, 2018 with early adoption permitted. The Company early adopted this standard effective January 1, 2018. Adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

ASU No. 2017-12, Derivatives and Hedging (Topic 815): Targeted Improvements to Accounting for Hedging Activities
This standard was created to provide more specific guidance and to simplify the application of hedge accounting in current U.S. GAAP to facilitate financial reporting that more closely reflects an entity's risk management activities. The new standard is effective for the fiscal year beginning after December 15, 2018. The Company is currently in the process of evaluating the potential impact of the adoption on its consolidated financial statements.

ASU No. 2018-02, Income Statement – Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income
This standard provides guidance on the reclassification of certain tax effects from AOCI to retained earnings in the period in which the effects of the change in the U.S. federal corporate income tax rate in the Tax Cuts and Jobs Act is recorded. The new standard is effective for the fiscal year beginning after December 15, 2018. The Company is currently in the process of evaluating the potential impact of the adoption on its consolidated financial statements.

ASU No. 2018-13, Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement
This amendment provides updates to the disclosure requirements on fair value measures in Topic 820 which includes the changes in unrealized gains and losses in other comprehensive income for recurring Level 3 fair value measurements, the option of additional quantitative information surrounding unobservable inputs and the elimination of disclosures around the valuation processes for Level 3 measurements. The new standard is effective for the fiscal year beginning after December 15, 2019. The Company is currently in the process of evaluating the impact of the adoption of this standard on its consolidated financial statements.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not required as we are a smaller reporting company.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Our consolidated financial statements required by this Item are set forth in Item 15 beginning on page F-1 of this Annual Report on Form 10-K.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Rule 13a-15(e) promulgated under the Exchange Act that are designed to ensure that information required to be disclosed in Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Principal Financial and Accounting Officer, as appropriate, to allow timely decisions regarding required disclosure.

As of December 31, 2018, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Principal Financial and Accounting Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on the foregoing, our Chief Executive Officer and Principal Financial and Accounting Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the year ended December 31, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Report of Management on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, our principal executive officer and principal financial and accounting officer and effected by our Board of Directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the financial statements.

Because of our inherent limitations, our internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2018. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control – Integrated Framework (2013 Framework).*

Based on our assessment, management believes that, as of December 31, 2018, our internal control over financial reporting is effective based on those criteria.

ITEM 9B. OTHER INFORMATION

On March 28, 2019, Janine Canale, our Controller, Principal Financial and Accounting Officer resigned, effective April 12, 2019, to commence another career opportunity.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information called for by this Item may be found in our definitive Proxy Statement in connection with our 2019 Annual Meeting of Stockholders to be filed with the SEC under the captions “Management and Corporate Governance Matters,” “Section 16(a) Beneficial Ownership Reporting Compliance,” and “Code of Conduct and Ethics” is incorporated by reference in this Item 10.

ITEM 11. EXECUTIVE COMPENSATION

Information called for by this Item may be found in our definitive Proxy Statement in connection with our 2019 Annual Meeting of Stockholders to be filed with the SEC under the captions “Executive Officer and Director Compensation” and “Management and Corporate Governance” and is incorporated by reference in this Item 11.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information called for by this Item may be found in our definitive Proxy Statement in connection with our 2019 Annual Meeting of Stockholders to be filed with the SEC under the captions “Security Ownership of Certain Beneficial Owners and Management” and “Equity Compensation Plan Information” and is incorporated by reference in this Item 12.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information called for by this Item may be found in our definitive Proxy Statement in connection with our 2019 Annual Meeting of Stockholders to be filed with the SEC under the captions “Certain Relationships and Related Person Transactions” and “Management and Corporate Governance” and is incorporated by reference in this Item 13.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Information called for by this Item may be found in our definitive Proxy Statement in connection with our 2019 Annual Meeting of Stockholders to be filed with the SEC under the caption “Independent Registered Public Accounting Firm” and is incorporated by reference in this Item 14.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) *Financial Statements.* For the financial statements included in this Annual Report on Form 10-K, see “Index to the Financial Statements” on page F-1.

(a)(2) *Financial Statement Schedules.* All schedules are omitted because they are not applicable or because the required information is included in the financial statements or notes thereto.

(a)(3) *Exhibits.* The following exhibits are filed as part of, or incorporated by reference into, this Annual Report on Form 10-K.

Exhibits Index

Exhibit No.	Description
	Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC, the unitholders of XpresSpa who are parties thereto and Mistral XH Representative, LLC, as representative of the unitholders, dated as of August 8, 2016 (incorporated by reference to Exhibit 2.1 to our Current Report on Form 8-K filed with the SEC on August 8, 2016).
2.2	Amendment No. 1 to Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC and Mistral XH Representative, LLC, as representative of the unitholders, dated September 8, 2016 (incorporated by reference to Exhibit 2.1 to our Current Report on Form 8-K filed with the SEC on September 9, 2016).
2.3	Amendment No. 2 to Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC and Mistral XH Representative, LLC, as representative of the unitholders, dated October 25, 2016 (incorporated by reference to Exhibit 2.1 to our Current Report on Form 8-K filed with the SEC on October 25, 2016).
3.1*	Amended and Restated Certificate of Incorporation, as amended as of December 31, 2018.
3.2*	Amended and Restated Bylaws.
3.3	Certificate of Designation of Series C Junior Participating Preferred Stock (incorporated by reference from Exhibit 3.1 to our Current Report on Form 8-K filed with the SEC on March 21, 2016).
3.4	Certificate of Designation of Preferences, Rights and Limitations of Series D Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed with the SEC on December 23, 2016).
3.5	Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to our Quarterly Report on Form 10-Q filed with the SEC on November 14, 2018).
4.1	Specimen Common Stock certificate (incorporated by reference from our Registration Statement on Form S-1 filed on May 18, 2010).

4.2	Form of Warrant (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on October 16, 2015)
4.3	Form of Warrant (incorporated by reference from Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on May 4, 2015)
4.4	Section 382 Rights Agreement, dated as of March 18, 2016, between Vringo, Inc. and American Stock Transfer & Trust Company, LLC, which includes the Form of Certificate of Designation of Series C Junior Participating Preferred Stock as Exhibit A, the Form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Stock as Exhibit C (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 21, 2016)
4.5	Amendment to Section 382 Rights Agreement, dated March 18, 2019, between the Company and American Stock Transfer & Trust Company, LLC (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on March 22, 2019).
4.6	Form of Warrant to Purchase Shares of Common Stock of FORM Holdings Corp. (incorporated by reference from Annex F to our Registration Statement on Form S-4 filed with the SEC on October 26, 2016)
4.7	Form of Secured Convertible Note (incorporated by reference from Exhibit 4.1 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
4.8	Form of Class A Warrant (incorporated by reference from Exhibit 4.2 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
4.9	Form of Class B Warrant (incorporated by reference from Exhibit 4.3 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.1†	Vringo, Inc. 2012 Employee, Director and Consultant Equity Incentive Plan, as amended (incorporated by reference from Appendix C of our Proxy Statement on Schedule 14A (DEF 14A) filed with the SEC on September 25, 2015)
10.2†	Form of Management Option Agreement (incorporated by reference from our Registration Statement on Form S-1 filed on March 29, 2010).
10.3†	Form of Stock Option Agreement (incorporated by reference from our Registration Statement on Form S-8 filed on July 26, 2012)
10.4†	Form of Restricted Stock Unit Agreement (incorporated by reference from our Registration Statement on Form S-8 filed on July 26, 2012)

10.5	Form of Indemnification Agreement, dated January 31, 2013, by and between Vringo, Inc. and each of its Directors and Executive Officer (incorporated by reference from our Annual Report on Form 10-K for the period ended December 31, 2012 filed on March 21, 2013)
10.6	Subscription Agreement, dated as of August 8, 2016, by and between FORM Holdings Corp. and Mistral Spa Holdings, LLC (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on August 8, 2016)
10.7	Subscription Agreement and Joinder, dated as of August 8, 2016, by and between XpresSpa Holdings, LLC and FORM Holdings Corp (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on August 8, 2016)
10.8†	FORM Holdings Corp. 2012 Employee, Director and Consultant Equity Incentive Plan, as amended (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on November 28, 2016)
10.9†	Independent Director's Agreement, by and between FORM Holdings Corp. and Andrew R. Heyer, dated as of December 23, 2016 (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on December 23, 2016)
10.10††	Confidential Settlement and Patent Assignment Agreement by and between FORM Holdings Corp. and Nokia Corporation dated as of December 5, 2016 (incorporated by reference from our Annual Report on Form 10-K for the period ended December 31, 2016 filed on March 30, 2017)
10.11	Form of Stock Purchase Agreement, dated as of February 2, 2016, by and between FORM Holdings Corp., Excalibur Integrated Systems, Inc., each of the holders of the capital stock of Excalibur, and the sellers' representative (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on February 3, 2017)
10.12†	Executive Employment Agreement, dated January 20, 2017, by and between FORM Holdings Corp. and Edward Jankowski (incorporated by reference from Exhibit 10.2 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2017)
10.13†	Executive Employment Agreement, dated January 18, 2017, by and between FORM Holdings Corp. and Andrew Perlman (incorporated by reference from Exhibit 10.3 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2017)
10.14†	Executive Employment Agreement, dated January 17, 2017, by and between FORM Holdings Corp. and Anastasia Nyrkovskaya (incorporated by reference from Exhibit 10.4 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2017)
10.15†	Executive Employment Agreement, dated January 17, 2017, by and between FORM Holdings Corp. and Jason Charkow (incorporated by reference from Exhibit 10.5 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2017)
10.16	Membership Purchase Agreement dated as of March 7, 2018 by and among Route1 Security Corporation, Route1 Inc. and XpresSpa Group, Inc. (incorporated by reference from Exhibit 2.1 to our Current Report on Form 8-K filed with the SEC on March 26, 2018)

10.17	Credit Agreement dated as of April 22, 2015, by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd (incorporated by reference from Exhibit 10.1 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.18	First Amendment to Credit Agreement and Conditional Waiver dated as of August 8, 2016, by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd (incorporated by reference from Exhibit 10.2 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.19	Second Amendment to Credit Agreement dated as of May 10, 2017, by and between XpresSpa Holdings, LLC and B3D, LLC (incorporated by reference from Exhibit 10.3 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.20	Third Amendment to Credit Agreement dated as of May 14, 2018, by and between XpresSpa Holdings, LLC and B3D, LLC (incorporated by reference from Exhibit 10.4 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.21	Security Agreement dated as of April 22, 2015, by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd (incorporated by reference from Exhibit 10.5 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.22	Supplement No. 1 to Security Agreement dated as of May 18, 2015, by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd (incorporated by reference from Exhibit 10.6 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.23	Supplement No. 2 to Security Agreement dated as of December 20, 2017, by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd (incorporated by reference from Exhibit 10.7 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.24	Form of Securities Purchase Agreement, dated May 15, 2018, by and among the Company and the Investors (incorporated by reference from Exhibit 10.8 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.25	Form of Registration Rights Agreement, dated May 15, 2018, by and among the Company and the Investors (incorporated by reference from Exhibit 10.9 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.26	Form of Security Agreement, dated May 15, 2018, by and among the Company, the Subsidiaries, the Collateral Agent and the Investors (incorporated by reference from Exhibit 10.10 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018).
10.27	Form of Stock Purchase Agreement, dated November 12, 2018, by and among the Company and Calm.com, Inc. (incorporated by reference from Exhibit 10.1 to our Quarterly Report on Form 10-Q filed with the SEC on November 14, 2018).
10.28*	Product Sale and Marketing Agreement, dated November 12, 2018, by and between the Company and Calm.com, Inc.
10.29†	Separation Agreement between the Company and Mr. Edward Jankowski, dated March 14, 2019 (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on March 15, 2019).
10.30†	Non-Disclosure Agreement between the Company and Mr. Edward Jankowski, dated March 14, 2019 (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on March 15, 2019).
21*	Subsidiaries of XpresSpa Group, Inc.
23.1*	Consent of CohnReznick LLP, independent registered public accounting firm
31.1*	Certification of Principal Executive Officer pursuant to Exchange Act, Rules 13a – 14(a) and 15d – 14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Principal Financial Officer pursuant to Exchange Act Rules 13a – 14(a) and 15d – 14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32**	Certifications of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document

* Filed herewith.

** Furnished herewith.

† Management contract or compensatory plan or arrangement.

†† Certain portions have been omitted pursuant to a confidential treatment request. Omitted information has been filed separately with the SEC.

ITEM 16. FORM 10-K SUMMARY

None.

Exhibit XpresSpa Group, Inc. and Subsidiaries
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Report of Independent Registered Public Accounting Firm

The Board of Directors and
Stockholders of XpresSpa Group, Inc.:

Opinion on the Consolidated Financial Statements
We have audited the accompanying consolidated balance sheets of XpresSpa Group, Inc. and subsidiaries (the Company) as of December 31, 2018 and 2017, and the related consolidated statements of operations and comprehensive loss, changes in stockholders' equity and cash flows for the years then ended, and the related notes (collectively referred to as the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2018 and 2017, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2018, in conformity with accounting principles generally accepted in the United States of America.

Substantial Doubt about the Company's Ability to Continue as a Going Concern
The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, based on its projections, the Company anticipates that during 2019, it will not have sufficient capital to repay the obligations under its credit agreement if called for repayment by the lenders. Furthermore, the Company's recurring losses from operations and working capital deficiency raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion
These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ CohnReznick LLP

We have served as the Company's auditor since 2015.

Jericho, New York
April 1, 2019

XpresSpa Group, Inc. and Subsidiaries
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	December 31, 2018	December 31, 2017
Current assets		
Cash and cash equivalents	$ 3,403	$ 6,368
Inventory	782	1,159
Other current assets	1,465	2,120
Assets held for disposal	109	6,446
Total current assets	5,759	16,093
Restricted cash	487	487
Property and equipment, net	11,795	15,797
Intangible assets, net	9,167	11,547
Goodwill	—	19,630
Other assets	3,376	1,686
Total assets	$ 30,584	$ 65,240
Current liabilities		
Accounts payable, accrued expenses and other current liabilities	$ 8,132	$ 8,736
Debt	6,500	—
Convertible notes	1,986	—
Liabilities held for disposal	40	3,761
Total current liabilities	16,658	12,497
Long-term liabilities		
Debt	—	6,500
Derivative warrant liabilities	476	34
Other liabilities	315	370
Total liabilities	17,449	19,401
Commitments and contingencies (see Note 18)		
Stockholders' equity*		
Series A Convertible Preferred stock, $0.01 par value per share; 348 shares authorized; 348 issued and none outstanding	—	—
Series B Convertible Preferred stock, $0.01 par value per share, 80,458 shares authorized; 80,458 shares issued and none outstanding	—	—
Series C Junior Preferred stock, $0.01 par value per share; 15,000 shares authorized; none issued and outstanding	—	—
Series D Convertible Preferred Stock, $0.01 par value per share, 25,000 shares authorized; 23,760 shares issued and 21,027 shares outstanding with a liquidation value of $20,186	4	4
Series E Convertible Preferred Stock, $0.01 par value per share, 73,665 shares authorized; 48,387 shares issued and outstanding with a liquidation value of $3,023	10	—
Common Stock, $0.01 par value per share 7,500,000 shares authorized; 1,761,802 and 1,327,284 shares issued and outstanding as of December 31, 2018 and 2017, respectively	352	265
Additional paid-in capital	295,904	290,396
Accumulated deficit	(286,913)	(249,708)
Accumulated other comprehensive loss	(251)	(74)
Total stockholders' equity attributable to the Company	9,106	40,883
Noncontrolling interests	4,029	4,956
Total stockholders' equity	13,135	45,839
Total liabilities and stockholders' equity	$ 30,584	$ 65,240

*Adjusted to reflect the impact of the 1:20 reverse stock split that became effective on February 22, 2019.

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

XpresSpa Group, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(In thousands, except share and per share data)

	For the years ended December 31,	
	2018	**2017**
Revenue		
Product and services	$ 49,294	$ 48,373
Other	800	450
Total revenue	50,094	48,823
Cost of sales		
Labor	24,369	24,327
Occupancy	8,118	7,621
Products and other operating costs	6,964	7,038
Total cost of sales	39,451	38,986
Depreciation and amortization	9,498	7,976
Goodwill impairment	19,630	—
General and administrative**	16,240	16,577
Total operating expenses	84,819	63,539
Operating loss from continuing operations	(34,725)	(14,716)
Interest expense	(1,827)	(731)
Extinguishment of debt	145	—
Other non-operating income (expense), net	498	(554)
Loss from continuing operations before income taxes	(35,909)	(16,001)
Income tax benefit (expense)	278	(111)
Consolidated net loss from continuing operations	(35,631)	(16,112)
Loss from discontinued operations before income taxes**	(1,115)	(12,265)
Income tax expense	—	(12)
Consolidated net loss from discontinued operations	(1,115)	(12,277)
Consolidated net loss	(36,746)	(28,389)
Net income attributable to noncontrolling interests	(459)	(451)
Net loss attributable to the Company	$ (37,205)	$ (28,840)
Consolidated net loss from continuing operations	$ (35,631)	$ (16,112)
Other comprehensive loss from continuing operations: foreign currency translation	(177)	(61)
Comprehensive loss from continuing operations	(35,808)	(16,173)
Consolidated net loss from discontinued operations	(1,115)	(12,277)
Other comprehensive income (loss) from discontinued operations: foreign currency translation	—	—
Comprehensive loss from discontinued operations	(1,115)	(12,277)
Comprehensive loss	$ (36,923)	$ (28,450)
Loss per share*		
Loss per share from continuing operations	$ (24.83)	$ (14.86)
Loss per share from discontinued operations	(0.77)	(11.02)
Total basic and diluted net loss per share	$ (25.60)	$ (25.88)
Weighted-average number of shares outstanding during the year*		
Basic	1,453,635	1,114,349
Diluted	1,453,635	1,114,349
****Includes stock-based compensation expense, as follows:**		
General and administrative	$ 916	$ 2,177
Discontinued operations	—	568
Total stock-based compensation expense	$ 916	$ 2,745

*Adjusted to reflect the impact of the 1:20 reverse stock split that became effective on February 22, 2019.

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

XpresSpa Group, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(In thousands)

	Preferred stock*	Common stock*	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Total Company equity	Non-controlling interest	Total equity
Balance as of December 31, 2016	$ 5	$ 183	$ 280,221	$ (220,868)	$ (13)	$ 59,528	$ 4,641	$ 64,169
Issuance of Common Stock for services	—	—	27	—	—	27	—	27
Shares of Common Stock issued for acquisition of Excalibur	—	9	1,800	—	—	1,809	—	1,809
Net proceeds from sale and issuance of shares of Common Stock in public offering	—	69	6,515	—	—	6,584	—	6,584
Decrease in shares of preferred stock issued to XpresSpa sellers	—	—	(908)	—	—	(908)	—	(908)
Conversion of preferred stock to Common Stock	(1)	4	(4)	—	—	(1)	—	(1)
Stock-based compensation	—	—	2,745	—	—	2,745	—	2,745
Net income (loss) for the year	—	—	—	(28,840)	—	(28,840)	451	(28,389)
Foreign currency translation	—	—	—	—	(61)	(61)	—	(61)
Contributions from noncontrolling interests	—	—	—	—	—	—	316	316
Distributions to noncontrolling interests	—	—	—	—	—	—	(452)	(452)
Balance as of December 31, 2017	$ 4	$ 265	$ 290,396	$ (249,708)	$ (74)	$ 40,883	$ 4,956	$ 45,839

	Preferred stock*	Common stock*	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Total Company equity	Non-controlling interest	Total equity
December 31, 2017	$ 4	$ 265	$ 290,396	$ (249,708)	$ (74)	$ 40,883	$ 4,956	$ 45,839
Vesting of restricted stock units ("RSUs")	—	6	(6)	—	—	—	—	—
Issuance of equity warrants	—	—	64	—	—	64	—	64
Issuance of Series E Convertible Preferred Stock	10	—	2,990	—	—	3,000	—	3,000
Issuance of Common Stock for services	—	5	242	—	—	247	—	247
Issuance of Common Stock for repayment of debt and interest	—	76	1,302	—	—	1,378	—	1,378
Stock-based compensation	—	—	916	—	—	916	—	916
Net income (loss) for the period	—	—	—	(37,205)	—	(37,205)	459	(36,746)
Foreign currency translation	—	—	—	—	(177)	(177)	—	(177)
Contributions from noncontrolling interests	—	—	—	—	—	—	250	250
Distributions to noncontrolling interests	—	—	—	—	—	—	(1,636)	(1,636)
December 31, 2018	$ 14	$ 352	$ 295,904	$ (286,913)	$ (251)	$ 9,106	$ 4,029	$ 13,135

*Adjusted to reflect the impact of the 1:20 reverse stock split that became effective on February 22, 2019.

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

XpresSpa Group, Inc. and Subsidiaries
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	For the years ended December 31,	
	2018	**2017**
Cash flows from operating activities		
Consolidated net loss	$ (36,746)	$ (28,389)
Consolidated net loss from discontinued operations	(1,115)	(12,277)
Consolidated net loss from continuing operations	(35,631)	(16,112)
Adjustments to reconcile consolidated net loss from continuing operations to net cash used in operating activities:		
Items not affecting cash flows		
Depreciation, impairment, and amortization	9,498	7,976
Impairment of goodwill	19,630	—
Amortization of debt discount and debt issuance costs	986	—
Stock-based compensation	916	2,177
Issuance of warrants	64	—
Conversion of shares of preferred stock to shares of Common Stock	—	(1)
Issuance of shares of Common Stock for services	247	27
Issuance of Common Stock for repayment of debt and interest	310	—
Gain on disposal of assets	—	(148)
Change in fair value of derivative warrant liabilities	(1,520)	(225)
Contingent liability as a result of acquisition	—	316
Gain on the sale of patents	(450)	—
Changes in assets and liabilities net of effects of acquisition		
Decrease in inventory	377	1,347
Increase in other current assets and other assets	(1,835)	(636)
Decrease in accounts payable, accrued expenses and other current liabilities	(604)	(3,114)
Decrease in other liabilities	(55)	(368)
Net cash used in operating activities – continuing operations	(8,067)	(8,761)
Net cash provided by (used in) operating activities – discontinued operations	1,501	(3,411)
Net cash used in operating activities	(6,566)	(12,172)
Cash flows from investing activities		
Cash acquired as part of acquisition	—	26
Acquisition of property and equipment	(3,031)	(4,479)
Acquisition of software	(85)	(233)
Proceeds from the sale of subsidiary	800	250
Proceeds from the sale of cost method investment	200	—
Proceeds from sale of patents	250	150
Net cash used in investing activities – continuing operations	(1,866)	(4,286)
Net cash used in investing activities – discontinued operations	—	(1,110)
Net cash used in investing activities	(1,866)	(5,396)
Cash flows from financing activities		
Proceeds from convertible notes and warrants	4,350	—
Debt issuance costs	(320)	—
Issuance of shares of Series E Convertible Preferred Stock	3,000	—
Net proceeds from sale and issuance of shares of Common Stock in public offering	—	6,584
Contributions from noncontrolling interests	250	316
Distributions to noncontrolling interests	(1,636)	(452)
Net cash provided by financing activities – continuing operations	5,644	6,448
Net cash used in financing activities – discontinued operations	—	(361)
Net cash provided by financing activities	5,644	6,087
Effect of exchange rate changes	(177)	(61)
Decrease in cash and cash equivalents	(2,965)	(11,542)
Cash, cash equivalents, and restricted cash at beginning of the year	6,855	18,397
Cash, cash equivalents, and restricted cash at end of the year	$ 3,890	$ 6,855
Cash paid during the year for		
Interest	$ 731	$ 731
Non-cash investing and financing transactions		
Issuance of shares of Common Stock to repay $1,068 of debt and interest	$ 1,378	$ —
Issuance of shares of Common Stock, preferred stock and warrants for the acquisition of XpresSpa	$ —	$ (908)
Issuance of shares of Common Stock for the acquisition of Excalibur	$ —	$ 1,809
Issuance of shares of Common Stock for services	$ 247	$ —
Non-cash acquisition of cost method investment	$ 2,075	$ —
Debt discount related to issuance of convertible notes	$ 1,962	$ —
Non-cash acquisition of construction-in-progress	$ 228	1,154

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

Note 1. General

Overview

On January 5, 2018, the Company changed its name to XpresSpa Group, Inc. ("XpresSpa Group" or the "Company") from FORM Holdings Corp. The Company's common stock, par value $0.01 per share (the "Common Stock"), which had previously been listed under the trading symbol "FH" on the Nasdaq Capital Market, has been listed under the trading symbol "XSPA" since January 8, 2018. Rebranding to XpresSpa Group aligned the Company's corporate strategy to build a pure-play health and wellness services company, which the Company commenced following its acquisition of XpresSpa Holdings, LLC ("XpresSpa") on December 23, 2016.

As a result of the transition to a pure-play health and wellness services company, the Company currently has one operating segment that is also its sole reporting unit, XpresSpa, a leading airport retailer of spa services. XpresSpa is a well-recognized airport spa brand with 56 locations, consisting of 51 domestic and 5 international locations as of December 31, 2018. XpresSpa offers travelers premium spa services, including massage, nail and skin care, as well as spa and travel products. During 2018 and 2017, XpresSpa generated $49,294 and $48,373 of revenue, respectively. In 2018 and 2017, approximately 83% and 82%, respectively, of XpresSpa's total revenue was generated by services, primarily massage and nailcare, and 17% and 18%, respectively, was generated by retail products, primarily travel accessories.

XpresSpa is a leading airport retailer of spa services and related products. As of December 31, 2018, XpresSpa operated 56 total locations in 23 airports, and one off-airport location in New York City, in three countries including the United States, Netherlands and United Arab Emirates. Services and products include:

- massage services for the neck, back, feet and whole body;
- nail care, such as pedicures, manicures and polish changes;
- travel products, such as neck pillows, blankets and massage tools; and

- new offerings, such as cryotherapy services, NormaTec compression services, and Dermalogica personal care services and retail products.

For over 15 years, increased security requirements have led travelers to spend more time at the airport. In addition, in anticipation of the long and often stressful security lines, travelers allow for more time to get through security and, as a result, often experience increased downtime prior to boarding. Consequently, travelers at large airport hubs have idle time in the terminal after passing through security.

XpresSpa was developed to address the stress and idle time spent at the airport, allowing travelers to spend this time productively, by relaxing and focusing on personal care and wellness. XpresSpa is well positioned to benefit from consumers' growing interest in health and wellness and increasing demand for spa services and related wellness products.

In addition, a confluence of microeconomic events has created favorable conditions for the expansion of retail concepts at airports, in particular retail concepts that attract higher spending from air travelers. The competition for airplane landings has forced airports to lower landing fees, which in turn has necessitated augmenting their retail offerings to offset budget shortfalls. Infrastructure projects at airports across the country, intended to make an airport more desirable to airlines, require funding from bond issuances that in turn rely upon, in part, the expected minimum rent guarantees and expected income from concessionaires.

The Company owns certain patent portfolios, which it looks to monetize through sales and licensing agreements. During the year ended December 31, 2018, the Company determined that its former intellectual property operating segment would no longer be an area of focus and, as such, will no longer operate as a separate operating segment, as it is not expected to generate any material revenues or operating costs.

In October 2017, the Company completed the sale of FLI Charge, Inc. ("FLI Charge") and in March 2018, the Company completed the sale of Group Mobile Int'l LLC ("Group Mobile"). These two entities previously comprised the Company's technology operating segment. The results of operations for FLI Charge and Group Mobile are presented in the consolidated statements of operations and comprehensive loss as consolidated net loss from discontinued operations. The carrying amounts of assets and liabilities belonging to Group Mobile as of December 31, 2018, and FLI Charge and Group Mobile as of December 31, 2017, are presented in the consolidated balance sheets as assets held for disposal and liabilities held for disposal, respectively.

Liquidity and Going Concern

As of December 31, 2018, the Company had approximately $3,403 of cash and cash equivalents, $2,247 of inventory and prepaid expenses and $109 of assets held for disposal, which amount to total current assets of $5,759. The Company's total current liabilities balance, which includes accounts payable, accrued expenses, debt, and the current portion of Convertible Notes, was $16,658 as of December 31, 2018. The working capital deficiency of $10,899 as of December 31, 2018 includes $1,986 of convertible notes classified as short-term for which principal repayments may be made in shares of Common Stock at the Company's election. In addition, included in total current liabilities is approximately $1,742 which relates to obligations that will not settle in cash, and an additional $465 of liabilities that are not expected to settle in the next twelve months.

While the Company has aggressively reduced operating and overhead expenses, and while the Company continues to focus on its overall profitability, the Company has continued to generate negative cash flows from operations and expects to incur net losses in the foreseeable future. The report of the Company's independent registered public accounting firm on its financial statements for the years ended December 31, 2018 and 2017 includes an explanatory paragraph indicating that there is substantial doubt about the Company's ability to continue as a going concern. The receipt of this explanatory paragraph with respect to the Company's financial statements for the years ended December 31, 2018 and 2017 will result in a breach of a covenant under the Senior Secured Note which, if unremedied for a period of 30 days after the date hereof, will constitute an event of default under the Senior Secured Note. Upon the occurrence of an event of default under the Senior Secured Note, Rockmore may, among other things, declare the Senior Secured Note and all accrued and unpaid interest thereon and all other amounts owing under the Senior Secured Note to be due and payable. If the maturity date of the Senior Secured Note is accelerated as a result of the event of default referenced above, an event of default under the Convertible Notes would be triggered. If an event of default under the Convertible Notes occurs, the outstanding principal amount of the Convertible Notes, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the holder's election, immediately due and payable in cash.

The Company has taken actions to improve its overall cash position and access to liquidity by exploring valuable strategic partnerships, right-sizing its corporate structure, and stream-lining operations. The Company expects that the actions taken in 2018 and early 2019 will enhance its liquidity and financial environment. In addition, the Company expects to generate additional liquidity through the monetization of certain investments and other assets. The Company expects that these actions will be executed in alignment with the anticipated timing of its liquidity needs. There can be no assurance, however, that any such opportunities will materialize.

The Company's historical operating results indicate that there is substantial doubt related to the Company's ability to continue as a going concern. The Company believes it is probable that the actions discussed above will transpire and will successfully mitigate the substantial doubt raised by its historical operating results and will satisfy its liquidity needs 12 months from the issuance of the financial statements. However, the Company cannot reasonably predict with any certainty that the results of its planned actions will generate the expected liquidity required to satisfy its liquidity needs.

If the Company continues to experience operating losses, and the Company is not able to generate additional liquidity through the actions described above or through some combination of other actions, while not expected, the Company may not be able to access additional funds and the Company might need to secure additional sources of funds, which may or may not be available. Additionally, a failure to generate additional liquidity could negatively impact its access to inventory or services that are important to the operation of the business.

Recent Developments

CEO Transition

On February 8, 2019, Edward Jankowski resigned as Chief Executive Officer of the Company and as a director of the Company. Mr. Jankowski's resignation was not as a result of any disagreement with the Company on any matters related to the Company's operations, policies or practices. Mr. Jankowski will receive termination benefits including $375 payable in equal installments over a twelve-month term commencing on February 13, 2019 and COBRA continuation coverage paid in full by the Company for up to a maximum of twelve months.

Effective as of February 11, 2019, Douglas Satzman was appointed by the Company's board of directors as the Chief Executive Officer of the Company and as a director of the Company.

Reverse Stock Split

On February 22, 2019, The Company filed a certificate of amendment to its amended and restated certificate of incorporation with the Secretary of State of the State of Delaware to effect a 1-for-20 reverse stock split of the Company's shares of Common Stock. Such amendment and ratio were previously approved by the Company's stockholders and board of directors, respectively.

As a result of the reverse stock split, every twenty (20) shares of the Company's pre-reverse split Common Stock were combined and reclassified into one (1) share of Common Stock. Proportionate voting rights and other rights of Common Stock holders were affected by the reverse stock split. Stockholders who would have otherwise held a fractional share of Common Stock received payment in cash in lieu of any such resulting fractional shares of Common Stock as the post-reverse split amounts of Common Stock were rounded down to the nearest full share. Such cash payment in lieu of a fractional share of Common Stock was calculated by multiplying such fractional interest in one share of Common Stock by the closing trading price of the Company's Common Stock on February 22, 2019, and rounded to the nearest cent. No fractional shares were issued in connection with the reverse stock split.

The Company's Common Stock began trading on the Nasdaq Capital Market on a post-reverse split basis at the open of business on February 25, 2019.

Dispositions

On October 20, 2017, the Company sold FLI Charge to a group of private investors and FLI Charge management, who now own and operate FLI Charge. In February 2019, the Company entered into an agreement to release FLI Charge's obligation to pay any royalties on FLI Charge's perpetual gross revenues with regard to conductive wireless charging, power, or accessories, and to cancel its warrants exercisable in FLI Charge in exchange for cash proceeds of $1,100, which were received in full on February 15, 2019.

On March 22, 2018, the Company sold Group Mobile to a third party. The Company has not provided any continued management or financing support to FLI Charge or Group Mobile.

Rebranding

On January 5, 2018, the Company changed its name to XpresSpa Group, Inc. from FORM Holdings Corp, which aligned the Company's corporate strategy to build a pure-play health and wellness services company. The Company's Common Stock, par value $0.01 per share, which had previously been listed under the trading symbol "FH" on the Nasdaq Capital Market, has been listed under the trading symbol "XSPA" since January 8, 2018.

Sale of Patents

In January 2018, the Company sold certain patents to Crypto Currency Patent Holdings Company LLC, a unit of Marathon Patent Group, Inc. ("Marathon"), for approximately $1,250, comprised of $250 in cash and 250,000 shares of Marathon Common Stock valued at approximately $1,000 at the time of the transaction. The Marathon Common Stock was subject to a lockup period (the "Lockup Period") which commenced on the transaction date and ended on July 11, 2018, subject to a leak-out provision. The Marathon Common Stock is recognized as a cost method investment and, as such, was required to be measured at cost on the date of acquisition, which, as of the transaction date, approximated fair value. The fair value of the Marathon Common Stock was estimated by multiplying the number of shares as they become tradeable by the price per share as of the transaction date; however, due to the fact that the Marathon Common Stock is restricted during the Lockup Period, the Company applied a discount on the lack of marketability to estimate the fair value at the measurement date. The fair value of the consideration as of the Transaction Date was determined to be $450.

Collaboration Agreement

On November 12, 2018, the Company entered into a Product Sale and Marketing Agreement (the "Collaboration Agreement") with Calm.com, Inc. ("Calm") primarily related to the display, marketing, promotion, offer for sale and sale of Calm's products in each of the Company's branded stores throughout the United States.

The Collaboration Agreement will remain in effect until July 31, 2019, unless terminated earlier in accordance with its terms, and automatically renew for successive terms of six months unless either party provides written notice of termination no later than thirty days prior to any such automatic renewal.

Financings

Secured Convertible Notes

On May 15, 2018, the Company entered into a securities purchase agreement (the "Securities Purchase Agreement") with certain institutional investors (the "Investors"), pursuant to which the Company agreed to sell up to (i) an aggregate principal amount of $4,438 in 5% Secured Convertible Notes due on November 16, 2019, which included $88 of convertible notes issued to Palladium Capital Advisors as Placement Agent (the "Convertible Notes"), convertible into shares of its Common Stock at a conversion price of $12.40 per share, (ii) Class A Warrants (the "Class A Warrants") to purchase 357,862 shares of Common Stock at an exercise price of $12.40 per share and (iii) Class B Warrants (the "Class B Warrants," and together with the Class A Warrants, the "Warrants") to purchase 178,931 shares of Common Stock at an exercise price of $12.40 per share. The Convertible Notes bear interest at a rate of 5% per annum. The Convertible Notes are senior secured obligations of the Company and are secured by certain of its personal property. Unless earlier converted or redeemed, the Convertible Notes will mature on November 16, 2019. The transaction closed on May 17, 2018, at which time the Company received $4,350 in gross proceeds from the Investors.

The principal amount of the outstanding Convertible Notes was originally to be repaid monthly in the amount of approximately $296, beginning on September 17, 2018, and the Company may make such payments and related interest payments in cash or, subject to certain conditions, in registered shares of its Common Stock (or a combination thereof), at its election. If the Company chooses to repay the Convertible Notes in shares of its Common Stock, the shares will be issued at a 10% discount to the volume weighted average price of its Common Stock for the five (5) trading days commencing eight (8) days prior to the relevant repayment date and ending on the fourth (4^{th}) trading day prior to such repayment date, subject to a minimum floor price of not less than 20% of the conversion price of the Convertible Notes on the issue date. The Company may also repay the Convertible Notes in advance of the maturity schedule subject to an early repayment penalty of 15%.

On August 14, 2018, the Company entered into an Amendment Agreement (the "First Amendment Agreement") whereby the initial monthly principal repayment and accrued interest due on the Convertible Notes of $351 was settled in 103,350 shares of Common Stock on August 15, 2018. All other material terms of the Securities Purchase Agreement remained unchanged. During the year ended December 31, 2018, several of the Investors converted their monthly principal payments and accrued interest due on the Convertible Notes into shares of Common Stock pursuant to the First Amendment Agreement, resulting in the issuance of an additional 377,109 shares of Common Stock.

On December 11, 2018, the Company entered into a Second Amendment Agreement (the "Second Amendment Agreement") whereby each Holder waived the Company's obligation to make any monthly payments for the months of January, February and March 2019. Pursuant to the Second Amendment Agreement, each Holder was permitted to convert its pro-rata share of the Convertible Notes, at a conversion price of $4.00 per share of Common Stock, such that the maximum number of shares to be issued pursuant to the Second Amendment Agreement shall not exceed 250,000 shares of Common Stock. All other material terms of the Securities Purchase Agreement remained unchanged. During the three-month period ended December 31, 2018, one of the Investors converted a portion of their allotted shares, in settlement of $23, into shares of Common Stock pursuant to the Second Amendment Agreement, resulting in the issuance of an additional 5,627 shares of Common Stock.

Collaboration Agreement and Series E Preferred Stock Financing

In connection with the entry into the Collaboration Agreement, the Company entered into a stock purchase agreement (the "Purchase Agreement") with Calm, pursuant to which the Company issued to Calm an aggregate of 32,258 shares of the Company's newly designated Series E Convertible Preferred Stock, par value $0.01 per share (the "Series E Preferred Stock"), which are initially convertible into 161,290 shares of Common Stock, par value $0.01 per share, at a conversion price of $12.40 per share, subject to certain adjustments. The purchase price per share of the Series E Preferred Stock was $62.00 per share for gross proceeds to the Company of $2,000. In addition, on December 28, 2018, in satisfaction of the conditions under the Purchase Agreement, the Company sold, and Calm purchased, 16,129 additional shares of Series E Preferred Stock (the "Additional Series E Shares"), which are initially convertible into 80,645 shares of Common Stock at a conversion price of $12.40 per share, subject to certain adjustments, for gross proceeds to the Company of $1,000. The sale of Additional Series E Shares were on the same terms and conditions as those contained in the Purchase Agreement.

Note 2. Accounting and Reporting Policies

(a) Basis of presentation and principles of consolidation

The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("U.S. GAAP"). The consolidated financial statements include the accounts of the Company, all entities that are wholly-owned by the Company, and all entities in which the Company has a controlling financial interest. All significant intercompany balances and transactions have been eliminated in consolidation.

(b) Use of estimates

The preparation of the accompanying consolidated financial statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the consolidated financial statements and the reported amounts of revenues and expenses for the periods presented. Actual results may differ from such estimates. Significant items subject to such estimates and assumptions include the Company's intangibles assets, the useful lives of the Company's intangible assets, the valuation of the Company's derivative warrant liabilities, the valuation of stock-based compensation, deferred tax assets and liabilities, income tax uncertainties, and other contingencies.

(c) Translation into United States dollars

The Company conducts certain transactions in foreign currencies, which are recorded at the exchange rate as of the transaction date. All exchange gains and losses occurring from the remeasurement of monetary balance sheet items denominated in non-dollar currencies are included in non-operating income (expense) in the consolidated statements of operations and comprehensive loss.

Accounts of the foreign subsidiaries of XpresSpa are translated into United States dollars. Assets and liabilities have been translated at year end exchange rates and revenues and expenses have been translated at average monthly rates for the year. The translation adjustments arising from the use of different exchange rates are included as foreign currency translation within the consolidated statements of operations and comprehensive loss and consolidated statements of changes in stockholders' equity.

(d) Cash and cash equivalents

The Company maintains cash in checking accounts with financial institutions. The Company has established guidelines relating to diversification and maturities of its investments in order to minimize credit risk and maintain high liquidity of funds. Cash equivalents include amounts due from third-party financial institutions for credit and debit card transactions which typically settle in less than five days. As of December 31, 2018 and 2017, cash and cash equivalents included $260 and $336 of credit card receivables, respectively. As of December 31, 2018, the Company held significant portions of its cash balance in overseas accounts, totaling $1,143, which is not insured by the Federal Deposit Insurance Corporation ("FDIC"). If the Company were to distribute the amounts held overseas, the Company would need to follow an approval and distribution process as defined in its operating and partnership agreements, which may delay and/or reduce the availability of cash to the Company. In addition, as of December 31, 2018 and 2017, there was an additional $487 of restricted cash held by a third party recorded as restricted cash on the Consolidated Balance Sheet.

(e) Derivative instruments

The Company recognizes all derivative instruments as either assets or liabilities in the consolidated balance sheets at their respective fair values. The Company's derivative instruments have been recorded as liabilities at fair value, and are revalued at each reporting date, with changes in the fair value of the instruments included in the consolidated statements of operations and comprehensive loss as non-operating income (expense). The Company reviews the terms of features embedded in non-derivative instruments to determine if such features require bifurcation and separate accounting as derivative financial instruments. Equity-linked derivative instruments are evaluated in accordance with FASB Accounting Standard Codification 815-40, "*Contracts in an Entity's Own Equity*" to determine if such instruments are indexed to the Company's own stock and qualify for classification in equity.

(f) Accounts receivable

Accounts receivable are recorded net of an allowance for doubtful accounts for estimated losses resulting from the inability of customers to make required payments. In developing the allowance, the Company considers historical loss experience, the overall quality of the receivable portfolio and specifically identified customer risks. The Company periodically reviews the adequacy of the allowance and the factors used in the estimation making adjustments to the estimate as necessary. Accounts receivable pertaining to continuing operations are included in other current assets in the consolidated balance sheets. As of December 31, 2018 and 2017, there was no allowance for doubtful accounts.

(g) Inventory

All inventory is valued at the lower of cost or net realizable value. Cost is determined using a weighted-average cost method. Inventory is included in current assets in the consolidated balance sheets.

(h) Intangible assets

Intangible assets include trade names, customer relationships, and technology, which were acquired as part of the acquisition of XpresSpa in December 2016 and are recorded based on the estimated fair value in purchase price allocation. Intangible assets also include purchased patents. The intangible assets are amortized over their estimated useful lives, which are periodically evaluated for reasonableness. Gain or loss on dispositions of intangible assets is reflected in general and administrative expense in the consolidated statements of operations and comprehensive loss.

The Company's intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In assessing the recoverability of the Company's intangible assets, the Company must make estimates and assumptions regarding future cash flows and other factors to determine the fair value of the respective assets. These estimates and assumptions could have a significant impact on whether an impairment charge is recognized and also the magnitude of any such charge. Fair value estimates are made at a specific point in time, based on relevant information. These estimates are subjective in nature and involve uncertainties and matters of significant judgments and therefore cannot be determined with precision. Changes in assumptions could significantly affect the estimates. If these estimates or material related assumptions change in the future, the Company may be required to record impairment charges related to its intangible assets.

(i) Property and equipment

Property and equipment is recorded at historical cost and primarily consists of leasehold improvements, furniture and fixtures, and other operating equipment. Depreciation is calculated on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are depreciated over the lesser of the lease term or economic useful life. Maintenance and repairs are charged to expense, and renovations or improvements that extend the service lives of the Company's assets are capitalized over the lesser of the extension period or life of the improvement. Gain or loss on dispositions of property and equipment is reflected in the consolidated net loss from discontinued operations in the consolidated statements of operations and comprehensive loss. Property and equipment is tested for impairment on at least an annual basis or whenever events or changes in circumstances indicate that its carrying amount may not be recoverable.

(j) Goodwill

Goodwill is an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized.

Goodwill is reviewed for impairment at least annually, and when triggering events occur, in accordance with the provisions of Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") *Topic 350, Intangibles – Goodwill and Other*. The Company evaluates goodwill impairment at the reporting unit level and performs its annual goodwill impairment test on December 31. The Company has adopted *ASU No. 2017-14, Intangibles – Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment* effective January 1, 2018. The Company has the option to perform a qualitative assessment to determine if an impairment is more likely than not to have occurred. If the Company can support the conclusion that it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, then they would not need to perform the quantitative impairment test for the reporting unit. If the Company cannot support such a conclusion or does not elect to perform the qualitative assessment, then the qualitative goodwill impairment test is used to identify potential impairment by comparing the fair value of the reporting unit with its carrying amount, including goodwill.

If the fair value of the reporting unit exceeds its carrying value, then the goodwill is not impaired. If the fair value of the reporting unit is less than its carrying value, an impairment charge will be recorded based on the excess of a reporting unit's carrying amount over its fair value. A significant amount of judgment is required in performing goodwill impairment tests including estimating the fair value of a reporting unit and the implied fair value of goodwill.

As of December 31, 2018, the Company's goodwill was fully impaired. See *"Note 6. Intangible Assets and Goodwill"* for further details on the assessment and conclusion on the goodwill impairment recorded during the year ended December 31, 2018.

(k) Restricted cash and other assets

Restricted cash, which is listed as its own line item in the consolidated balance sheets, represents balances at financial institutions to secure bonds and letters of credit as required by the Company's various lease agreements. Other assets include cost basis investments.

Prior to December 31, 2013, the Company operated a global platform for the distribution of mobile social applications and services. On February 18, 2014, the Company sold its mobile social application business to InfoMedia Services Limited ("InfoMedia"), receiving an 8.25% ownership interest in InfoMedia as consideration and a seat on the board of directors of InfoMedia. The Company's equity interest increased from 8.25% to 11% in the first quarter of 2017 due to a realignment of ownership interests. The Company's investment in InfoMedia is included in other assets in the consolidated balance sheets for the years ended December 31, 2018 and 2017.

(l) Revenue recognition

The Company recognizes revenue from the sale of XpresSpa products and services at the point of sale, net of discounts and applicable sales taxes. Revenues from the XpresSpa wholesale and e-commerce businesses are recorded at the time goods are shipped. Accordingly, the Company recognizes revenue for its single performance obligation related to both in-store and online sales at the point at which the service has been performed or the control of the merchandise has passed to the customer. The Company excludes all sales taxes assessed to its customers. Sales taxes assessed on revenues are included in accounts payable, accrued expenses and other current liabilities in the consolidated balance sheets until remitted to the state agencies.

The Company also has a franchise agreement with an unaffiliated franchisee to operate an XpresSpa location. The Company has identified the franchise right as a distinct performance obligation that transfers over time, and therefore any portion of the non-recurring initial franchise fee that is allocated to the franchise right should be recognized over the course of the contract rather than all upfront as would be the case with distinct performance obligations. Under the Company's franchising model, all initial franchising fees relate to the franchise right and therefore are recognized over the course of the contract which commences upon signing of the agreement. Upon receipt of the non-recurring, non-refundable initial franchise fee, management records a deferred revenue asset and recognizes revenue on a straight-line basis over the contract term. As of December 31, 2018, there were no franchise royalty revenues as operations have not yet commenced. Once operations commence, franchise royalty revenue will be recorded in the period earned.

Other revenue relates to one-time intellectual property licenses as well as the sale of certain of the Company's intellectual property. Revenue from patent licensing is recognized when the Company transfers promised intellectual property rights to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those intellectual property rights. Currently, revenue arrangements related to intellectual property provide for the payment of contractually determined fees and other consideration for the grant of certain intellectual property rights related to the Company's patents. These rights typically include some combination of the following: (i) the grant of a non-exclusive, retroactive and future license to manufacture and/or sell products covered by patents, (ii) the release of the licensee from certain claims, and (iii) the dismissal of any pending litigation. The intellectual property rights granted typically extend until the expiration of the related patents. Pursuant to the terms of these agreements, the Company has no further obligation with respect to the grant of the non-exclusive retroactive and future licenses, covenants-not-to-sue, releases, and other deliverables, including no express or implied obligation on the Company's part to maintain or upgrade the related technology, or provide future support or services. Generally, the agreements provide for the grant of the licenses, covenants-not-to-sue, releases, and other significant deliverables upon execution of the agreement, or upon receipt of the upfront payment. As such, the earnings process is complete and revenue is recognized upon the execution of the agreement, receipt of the upfront fee, and transfer of the promised intellectual property rights.

(m) Gift cards and customer rewards program

XpresSpa offers no-fee, non-expiring gift cards to its customers. No revenue is recognized upon issuance of a gift card and a liability is established for the gift card's cash value. The liability is relieved, and revenue is recognized upon redemption by the customer. As the gift cards have no expiration date, there is no provision for reduction in the value of unused card balances.

In addition, XpresSpa maintains a rewards program in which customers earn loyalty points, which can be redeemed for future services. Loyalty points are rewarded upon joining the loyalty program, for customer birthdays, and based upon customer spending. When a customer redeems loyalty points, the Company recognizes revenue for the redeemed cash value and reduces the related loyalty program liability. On June 1, 2018, the Company adopted a formal expiration policy whereby any loyalty members with inactivity for an 18-month period will forfeit any unused loyalty rewards.

The costs associated with gift cards and reward points are accrued as the rewards are earned by the cardholder and are included in accounts payable, accrued expenses and other current liabilities in the consolidated balance sheets until remitted to the state agencies.

(n) Segment reporting

The Company's continuing operating segments are defined as components of an enterprise about which separate financial information is available that is regularly evaluated by the enterprise's chief operating decision maker ("CODM") in deciding how to allocate resources and in assessing performance. As a result of the Company's transition to a pure-play health and wellness services company, it currently has one operating segment that is also its sole reporting unit, XpresSpa.

The Company owns certain patent portfolios, which it looks to monetize through sales and licensing agreements. During the year ended December 31, 2018, the Company determined that its former intellectual property operating segment would no longer be an area of focus and, as such, will no longer operate as a separate operating segment, as it is not expected to generate any material revenues or operating costs.

(o) Rent expense

Minimum rent expense is recognized over the term of the lease, starting when possession of the property is taken from the landlord, which normally includes a construction period prior to the store opening. When a lease contains a predetermined fixed escalation of the minimum rent, the Company recognizes the related rent expense on a straight-line basis and records the difference between the recognized rent expense and the amounts payable under the lease as a short-term or long-term deferred rent liability. Costs related to common area maintenance, insurance, real estate taxes, and other occupancy costs the Company is obligated to pay are excluded from minimum rent expense.

Certain leases provide for contingent rents that are not measurable at inception. These contingent rents are primarily based on a percentage of sales that are in excess of a predetermined level and/or rent increase based on a change in the consumer price index or fair market value. These amounts are excluded from minimum rent and are included in the determination of rent expense when it is probable that the expense has been incurred and the amount can be reasonably estimated.

(p) Pre-opening costs

Pre-opening and start-up activity costs, which include rent and occupancy, supplies, advertising, and other direct expenses incurred prior to the opening of a new store, are expensed in the period in which they are incurred.

(q) Cost of sales

Cost of sales for the Company's wellness operating segment consists of store-level costs. Store-level costs include all costs that are directly attributable to the store operations and include:

- payroll and related benefits for store operations and store-level management;
- rent, percentage rent and occupancy costs;
- the cost of merchandise;
- freight, shipping and handling costs;
- production costs;
- inventory shortage and valuation adjustments, including purchase price allocation increase in fair values which was recorded as part of acquisition; and
- costs associated with sourcing operations.

Cost of sales for the Company's intellectual property operating segment mainly includes expenses incurred in connection with the Company's patent licensing and enforcement activities, patent-related legal expenses paid to external patent counsel (including contingent legal fees), licensing and enforcement related research, consulting and other expenses paid to third parties, as well as related internal payroll expenses.

(r) Stock-based compensation

Stock-based compensation is recognized as an expense in the consolidated statements of operations and comprehensive loss and such cost is measured at the grant-date fair value of the equity-settled award. The fair value of stock options is estimated as of the date of grant using the Black-Scholes-Merton ("Black-Scholes") option-pricing model. The fair value of RSUs is calculated as of the date of grant using the grant date closing share price multiplied by the number of RSUs granted. The expense is recognized on a straight-line basis, over the requisite service period. The Company uses the simplified method to estimate the expected term of options due to insufficient history and high turnover in the past. Expected volatility is estimated based on a weighted average historical volatility of the Company and comparable entities with publicly traded shares. The risk-free rate for the expected term of the option is based on the United States Treasury yield curve as of the date of grant.

(s) Income taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided for the amount of deferred tax assets that, based on available evidence, are not more likely than not to be realized. Tax benefits related to excess deductions on stock-based compensation arrangements are recognized when they reduce taxes payable.

On December 22, 2017, the United States government enacted comprehensive tax reform, commonly referred to as the Tax Cuts and Jobs Act of 2017 ("Tax Act"). The Tax Act makes changes to the corporate tax rate, business-related deductions and taxation of foreign earnings, among other changes, that generally became effective for tax years beginning after December 31, 2017.

In assessing the need for a valuation allowance, the Company looks at cumulative losses in recent years, estimates of future taxable earnings, feasibility of tax planning strategies, the ability to realize tax benefit carryforwards, and other relevant information. Valuation allowances related to deferred tax assets can be impacted by changes to tax laws, changes to statutory tax rates and future taxable earnings. Ultimately, the actual tax benefits to be realized will be based upon future taxable earnings levels, which are very difficult to predict. In the event that actual results differ from these estimates in future periods, the Company will be required to adjust the valuation allowance.

Significant judgment is required in evaluating the Company's federal, state, local, and foreign tax positions and in the determination of its tax provision. Despite management's belief that the Company's liability for unrecognized tax benefits is adequate, it is often difficult to predict the final outcome or the timing of the resolution of any particular tax matters. The Company may adjust these accruals as relevant circumstances evolve, such as guidance from the relevant tax authority, its tax advisors, or resolution of issues in the courts. The Company's tax expense includes the impact of accrual provisions and changes to accruals that it considers appropriate. These adjustments are recognized as a component of income tax expense entirely in the period in which new information is available. The Company records interest related to unrecognized tax benefits in interest expense and penalties in the consolidated statements of operations and comprehensive loss as general and administrative expenses.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

(t) Noncontrolling interests

Noncontrolling interests represent the noncontrolling holders’ percentage share of earnings or losses from the subsidiaries, in which the Company holds a majority, but less than 100%, ownership interest and the results of which are included in the Company’s consolidated statements of operations and comprehensive loss. Net earnings attributable to noncontrolling interests represents the proportionate share of the noncontrolling holders' ownership in certain subsidiaries of XpresSpa.

(u) Net loss per common share

Basic net loss per share is computed by dividing the net loss attributable to the Company for the period by the weighted-average number of shares of Common Stock outstanding during the period. Diluted net loss per share is computed by dividing the net loss attributable to the Company for the period by the weighted-average number of shares of Common Stock plus dilutive potential Common Stock considered outstanding during the period. However, as the Company generated net losses in all periods presented, some potentially dilutive securities that relate to the continuing operations, including certain warrants and stock options, were not reflected in diluted net loss per share because the impact of such instruments was anti-dilutive.

(v) Commitments and contingencies

Liabilities for loss contingencies arising from assessments, estimates or other sources are to be recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. Legal costs expected to be incurred in connection with a loss contingency are expensed as incurred.

(w) Reclassification

Certain balances have been reclassified to conform to presentation requirements, including presentation of discontinued operations and assets and liabilities held for disposal with respect to the Company’s FLI Charge and Group Mobile businesses, as well as consistent presentation of cost of sales and general and administrative expenses to align the presentation for operating segments.

(x) Fair value measurements

The Company measures fair value in accordance with FASB ASC 820-10, *Fair Value Measurements and Disclosures*. FASB ASC 820-10 clarifies that fair value is an exit price, representing the amount that would be received by selling an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. As a basis for considering such assumptions, FASB ASC 820-10 establishes a three-tier value hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value:

Level 1: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the reporting entity at the measurement date.

Level 2: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.

Level 3: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

(y) Recently issued accounting pronouncements

ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606)
The core principle of this new standard is that revenue should be recognized to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. This guidance was amended in July 2015 and is effective for annual reporting periods beginning after December 15, 2017. Adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

ASU No. 2014-15, Presentation of Financial Statements — Going Concern, Disclosures of Uncertainties about an Entity's Ability to Continue as a Going Concern
This standard requires management to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the entity's ability to continue as a going concern within one year after the date that the financial statements are issued. Substantial doubt about an entity's ability to continue as a going concern exists when it is probable that the entity will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued. Management's evaluation should be based on relevant conditions and events that are known and reasonably knowable at the date that the financial statements are issued. The amendments in this Update are effective for the annual period beginning after December 15, 2016.

ASU No. 2016-01, Financial Instruments – Overall (Topic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities
This standard amends various aspects of the recognition, measurement, presentation, and disclosure for financial instruments. With respect to the Company's consolidated financial statements, the most significant impact relates to the accounting for equity investments. It will impact the disclosure and presentation of financial assets and liabilities. The amendments in this update are effective for annual reporting periods, and interim periods within those years beginning after December 15, 2017. Adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

ASU No. 2016-02, Leases (Topic 842)

This standard provides new guidance related to accounting for leases and supersedes GAAP on lease accounting with the intent to increase transparency. This standard requires operating leases to be recorded on the balance sheet as assets and liabilities and requires disclosure of key information about leasing arrangements. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statement of operations and comprehensive loss.

In 2016, FASB issued ASU 2016-02, Leases, and several amendments (collectively, "ASU 2016-02"), which requires the Company to recognize assets and liabilities arising from most operating leases on the consolidated statements of financial condition. In 2018, the FASB issued ASU 2018-11, Targeted Improvements ("ASU 2018-11"), which provides a transition option to not apply the new lease standard to the comparative periods presented in the consolidated statements of financial condition. Under this transition option, the Company shall apply the new leases standard at the adoption date and recognizes any cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption.

The Company adopted ASU 2016-02 effective for the fiscal year beginning after December 15, 2018 on a modified retrospective basis. The Company applied the transition option permitted by ASU 2018-11 and elected the package of practical expedients to alleviate certain operational and reporting complexities related to the adoption. The Company expects to recognize right-of-use assets and lease liabilities in the range of $10 million to $12 million for its current operating leases upon adoption of ASU 2016-02 and does not expect the adoption to have a material impact on its results of operations or cash flows.

ASU No. 2016-13, Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments

This standard changes the impairment model for most financial assets that are measured at amortized cost and certain other instruments, including trade receivables, from an incurred loss model to an expected loss model and adds certain new required disclosures. Under the expected loss model, entities will recognize estimated credit losses to be incurred over the entire contractual term of the instrument rather than delaying recognition of credit losses until it is probable the loss has been incurred. The new standard is effective for the fiscal year beginning after December 15, 2019, with early adoption permitted. The Company is currently in the process of evaluating the potential impact of the adoption on its consolidated financial statements.

ASU No. 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts, Cash Payments, and Restricted Stock

This standard provides new guidance to help clarify whether certain items should be categorized as operating, investing, or financing in the statement of cash flows. This ASU No. 2016-15 provides guidance on eight specific cash flow issues. The new standard is effective for the fiscal year beginning after December 15, 2017, with early adoption permitted. Adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

ASU No. 2016-18, Statement of Cash Flows (Topic 230): Restricted Cash

This amendment clarifies the classification and presentation of restricted cash in the consolidated statement of cash flows under Topic 230. In addition to providing explanation on the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. The new standard is effective for the fiscal year beginning after December 15, 2017, with early adoption permitted. We adopted ASU 2016-18 effective January 1, 2018. As a result of the adoption of ASU 2016-18, in the consolidated statement of cash flows for the year ended December 31, 2018, we reclassified $487 of restricted cash.

ASU No. 2017-09, Stock Compensation (Topic 718): Scope of Modification Accounting
This standard provides guidance about which changes to the terms or conditions of a stock-based payment award require an entity to apply modification accounting in Topic 718. The current disclosure requirements in Topic 718 apply regardless of whether an entity is required to apply modification accounting under the amendments in this update. ASU 2017-09 is effective for annual periods, and interim periods within those annual periods, beginning after December 15, 2017; early adoption is permitted. Adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

ASU No. 2017-11, Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815)
This standard provides new guidance to address the complexity of accounting for certain financial instruments with down round features. The amendments of this ASU change the classification analysis of certain equity-linked financial instruments (or embedded features) with down round features. A down round feature no longer precludes equity classification when assessing whether the instrument is indexed to an entity's own stock. A freestanding equity-linked financial instrument (or embedded conversion feature) no longer would be accounted for as a derivative liability at fair value as a result of the existence of a down round feature. The new standard is effective for the fiscal year beginning after December 15, 2018 with early adoption permitted. The Company early adopted this standard effective January 1, 2018. Adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

ASU No. 2017-12, Derivatives and Hedging (Topic 815): Targeted Improvements to Accounting for Hedging Activities
This standard was created to provide more specific guidance and to simplify the application of hedge accounting in current U.S. GAAP to facilitate financial reporting that more closely reflects an entity's risk management activities. The new standard is effective for the fiscal year beginning after December 15, 2018. The Company is currently in the process of evaluating the potential impact of the adoption on its consolidated financial statements.

ASU No. 2018-02, Income Statement – Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income
This standard provides guidance on the reclassification of certain tax effects from AOCI to retained earnings in the period in which the effects of the change in the U.S. federal corporate income tax rate in the Tax Cuts and Jobs Act is recorded. The new standard is effective for the fiscal year beginning after December 15, 2018. The Company is currently in the process of evaluating the potential impact of the adoption on its consolidated financial statements.

ASU No. 2018-13, Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement
This amendment provides updates to the disclosure requirements on fair value measures in Topic 820 which includes the changes in unrealized gains and losses in other comprehensive income for recurring Level 3 fair value measurements, the option of additional quantitative information surrounding unobservable inputs and the elimination of disclosures around the valuation processes for Level 3 measurements. The new standard is effective for the fiscal year beginning after December 15, 2019. The Company is currently in the process of evaluating the impact of the adoption of this standard on its consolidated financial statements.

Note 3. Net Loss per Share of Common Stock*

The table below presents the computation of basic and diluted net losses per share of Common Stock:

	For the years ended December 31,	
	2018	2017
Basic numerator:		
Net loss from continuing operations attributable to shares of Common Stock	$ (36,090)	$ (16,563)
Net loss from discontinued operations attributable to shares of Common Stock	(1,115)	(12,277)
Net loss attributable to the Company	$ (37,205)	$ (28,840)
Basic denominator:		
Basic shares of Common Stock outstanding*	1,453,635	1,114,349
Basic loss per share of Common Stock from continuing operations	$ (24.83)	$ (14.86)
Basic loss per share of Common Stock from discontinued operations	(0.77)	(11.02)
Basic net loss per share of Common Stock	$ (25.60)	$ (25.88)
Diluted numerator:		
Net loss from continuing operations attributable to shares of Common Stock	$ (36,090)	$ (16,563)
Net loss from discontinued operations attributable to shares of Common Stock	(1,115)	(12,277)
Net loss attributable to the Company	$ (37,205)	$ (28,840)
Diluted denominator:		
Diluted shares of Common Stock outstanding*	1,453,635	1,114,349
Diluted loss per share of Common Stock from continuing operations	$ (24.83)	$ (14.86)
Diluted loss per share of Common Stock from discontinued operations	(0.77)	(11.02)
Diluted net loss per share of Common Stock	$ (25.60)	$ (25.88)
Net loss per share data presented excludes from the calculation of diluted net loss the following potentially dilutive securities, as they had an anti-dilutive impact*:		
Both vested and unvested options outstanding to purchase an equal number of shares of Common Stock of the Company	101,979	215,897
Unvested RSUs to issue an equal number of shares of Common Stock of the Company	17,750	18,278
Warrants to purchase an equal number of shares of Common Stock of the Company	703,670	154,375
Preferred stock on an as converted basis	6,364,328	168,216
Conversion feature of senior secured notes	217,500	—
Total number of potentially dilutive instruments, excluded from the calculation of net loss per share*	7,405,227	556,767

*Adjusted to reflect the impact of the 1:20 reverse stock split that became effective on February 22, 2019.

Note 4. Cash, Cash Equivalents, and Restricted Cash

	December 31,	
	2018	2017
Cash denominated in United States dollars	$ 2,000	$ 3,924
Cash denominated in currency other than United States dollars	1,143	2,108
Credit and debit card receivables	260	336
	$ 3,403	$ 6,368

In addition, as of December 31, 2018 and 2017, there was an additional $487 of restricted cash held by a third party recorded as restricted cash on the Consolidated Balance Sheet.

Note 5. Other Assets

Other assets in the consolidated balance sheets are comprised of the following as of December 31, 2018 and 2017:

	December 31, 2018	December 31, 2017
Cost method investments	$ 2,482	$ 834
Lease deposits	894	852
Other assets	$ 3,376	$ 1,686

As of December 31, 2018, the Company's other assets included:

- $1,625 cost method investment in Route1 Inc. ("Route1"), which the Company received from the disposition of Group Mobile in March 2018;
- $787 cost method investment in InfoMedia Services Limited ("InfoMedia"), which the Company acquired in 2014;
- $23 cost method investment in Marathon Patent Group, Inc. ("Marathon"), which the Company acquired in January 2018 with an acquisition date fair value of $450. Based on the Company's evaluation of the investment, it was determined that certain unrealized losses represented an other-than-temporary impairment as of December 31, 2018 and the Company recognized an impairment charge of $148 for the year ended December 31, 2018, equal to the excess of carrying value over fair value. During the year ended December 31, 2018, the Company sold 205,646 shares of Marathon Common Stock, with a carrying value of $279, for net proceeds of $200;
- $47 cost method investment in FLI Charge, which the Company received from the disposition of FLI Charge in October 2017; and
- $894 deposits made pursuant to various lease agreements, which will be returned to the Company at the end of the leases.

Note 6. Intangible Assets and Goodwill

Intangible assets

The following table provides information regarding the Company's intangible assets, which consist of the following:

	December 31, 2018			December 31, 2017			
	Gross Carrying Amount	Accumulated Amortization and Impairment	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization and Impairment	Net Carrying Amount	Weighted average amortization period (years)
Trade name	$ 13,309	$ (4,485)	$ 8,824	$ 13,309	$ (2,269)	$ 11,040	6.00
Customer relationships	312	(312)	—	312	(156)	156	2.00
Software	312	(69)	243	233	(4)	229	3.00
Patents	26,897	(26,797)	100	26,897	(26,775)	122	13.69
Total intangible assets	$ 40,830	$ (31,663)	$ 9,167	$ 40,751	$ (29,204)	$ 11,547	

The Company's trade name relates to the value of the XpresSpa trade name, customer relationships represent the value of the loyalty customers, software relates to certain capitalized third-party costs related to a new point-of-sale system, and patents consist of intellectual property portfolios acquired from third parties.

The Company's intangible assets are amortized over their expected useful lives. During the year ended December 31, 2018, the Company recorded amortization expense of $2,465. During the year ended December 31, 2017, the Company recorded amortization and impairment expense of $2,403 related to its intangible assets.

There were no impairment indicators related to any of the Company's amortizable intangible assets during the year ended December 31, 2018 for the Company's continuing operations.

Estimated amortization expense for the Company's intangible assets for each of the five succeeding years and thereafter at December 31, 2018 is as follows:

Years ending December 31,	**Amount**
2019	$ 2,305
2020	2,293
2021	2,284
2022	2,232
2023	15
Thereafter	38
Total	$ 9,167

Goodwill

On January 5, 2018, the Company changed its name to XpresSpa Group as part of a rebranding effort to carry out its corporate strategy to build a pure-play health and wellness services company, which the Company commenced following its acquisition of XpresSpa on December 23, 2016. The Company completed the sale of Group Mobile on March 22, 2018, which was the only remaining component of the Company's technology operating segment. Following the sale of Group Mobile, the Company's management made the decision that its intellectual property operating segment would no longer be an area of focus and would no longer be a separate operating segment as it is not expected to generate any material revenues. This completed the transition of the Company into a pure-play health and wellness company with only one operating segment, consisting of its XpresSpa business.

The Company's market capitalization is sensitive to the volatility of its stock price. On January 2, 2018, the first trading day of fiscal year 2018, the Company's stock price opened at $544.00 and closed at $29.00. The closing price of the Company's stock on March 29, 2018, the last trading day of the first quarter of fiscal 2018, was $14.40. The average closing stock price of the Company from January 2, 2018 through March 29, 2018 was approximately $20.40, ranging from $14.20 to $36.00 during that period.

On April 19, 2018, the Company entered into a separation agreement with its Chief Executive Officer regarding his resignation as Chief Executive Officer and as a Director the Company. On that same date, the Company's Senior Vice President and Chief Executive Officer of XpresSpa was appointed by the Board of Directors as the Chief Executive Officer and as a Director of the Company.

These events were identified by the Company's management as triggering events requiring that goodwill be tested for impairment as of March 31, 2018. In addition to the Company's rebranding efforts to a pure-play health and wellness services company, its stock price continued to decline even after the announcement of the new Chief Executive Officer. As the stock price had not rebounded, the Company determined that the impairment was incurred during the three-month period ended March 31, 2018.

The Company performed a quantitative goodwill impairment test, in which the Company compared the carrying value of the reporting unit to its estimated fair value, which was calculated using an income approach. The key assumptions for this approach were projected future cash flows and a discount rate, which was based on a weighted average cost of capital adjusted for the relevant risk associated with the characteristics of the business and the projected future cash flows. As a result of the quantitative goodwill impairment test performed as of March 31, 2018, the Company determined that the fair value of the reporting unit did not exceed its carrying amount and, therefore, goodwill of the reporting unit was considered impaired.

Based on the estimated fair value of goodwill, the Company recorded an impairment charge of $19,630, to reduce the carrying value of goodwill to its fair value, which was determined to be zero. This impairment charge is included in goodwill impairment in the consolidated statements of operations and comprehensive loss for the year ended December 31, 2018.

The fair value measurement of goodwill was classified within Level 3 of the fair value hierarchy because the income approach was used, which utilizes significant inputs that are unobservable in the market. The Company believes it made reasonable estimates and assumptions to calculate the fair value of the reporting unit as of the impairment test measurement date.

The following table provides information regarding the Company's goodwill, which relates to the acquisition of XpresSpa completed in December 2016, and related impairment charge recorded during the year ended December 31, 2018. See "Note 16 – Discontinued Operations and Assets and Liabilities Held for Disposal" for impairment charges pertaining to discontinued operations for the year ended December 31, 2017.

Goodwill as of December 31, 2016	$ 20,303
Adjustments to XpresSpa goodwill	(673)
Goodwill as of December 31, 2017	19,630
Impairment of goodwill	(19,630)
Goodwill as of December 31, 2018	$ —

Note 7. Segment Information

The Company's continuing operating segments are defined as components of an enterprise about which separate financial information is available that is regularly evaluated by the enterprise's CODM in deciding how to allocate resources and in assessing performance. As a result of the Company's transition to a pure-play health and wellness services company, it currently has one operating segment that is also its sole reporting unit, XpresSpa.

The Company currently operates in two geographical regions: United States and all other countries. The following table represents the geographical revenue, regional operating loss, and total asset information as of and for the years ended December 31, 2018 and 2017. There were no concentrations of geographical revenue, regional operating loss or total assets related to any single foreign country that were material to the Company's consolidated financial statements.

	For the years ended December 31,	
	2018	**2017**
Revenue		
United States	$ 44,738	$ 43,555
All other countries	5,356	5,268
Total revenue	50,094	48,823
Cost of sales		
United States	36,017	35,844
All other countries	3,434	3,142
Total cost of sales	39,451	38,986
Segment operating income (loss)		
United States	(36,125)	(16,282)
All other countries	1,400	1,566
Operating loss from continuing operations	(34,725)	(14,716)
Corporate non-operating expense, net	(1,184)	(1,285)
Loss from continuing operations before income taxes	$ (35,909)	$ (16,001)
Assets		
United States	$ 27,809	$ 55,152
All other countries	2,666	3,642
Assets held for disposal	109	6,446
Total assets	$ 30,584	$ 65,240

Note 8. Debt and Convertible Notes

Debt

As part of the acquisition of XpresSpa, which was completed on December 23, 2016, the Company recorded the debt described below.

XpresSpa entered into a credit agreement and secured promissory note (the "Debt") with Rockmore Investment Master Fund Ltd. ("Rockmore"), a related party, on April 22, 2015 that was amended on August 8, 2016. Rockmore is an investment entity controlled by the Company's Chairman of the Board of Directors, Bruce T. Bernstein.

The total principal of the Debt is $6,500 payable in full upon maturity on December 31, 2019. In May 2017, per the original agreement and with Rockmore's consent, the Company elected to extend the maturity date of the Debt from May 1, 2018 to May 1, 2019. No other material terms of the Debt were modified. The Debt bears 11.24% interest per year (based on 360 days in a year) that is payable as follows:

- 9.24% annual interest, calculated on a monthly basis, which is payable in arrears on the last business day of each month plus
- 2% annual interest, calculated on a monthly basis, which accrues monthly and becomes due and payable on the Debt anniversary dates.

On May 14, 2018, the Company and Rockmore agreed to extend the maturity date of the Debt from May 1, 2019 to December 31, 2019. No other material terms of the Debt were modified. As consideration for the agreement to extend the maturity date of the Debt and the consent to the Securities Purchase Agreement, the Company issued to Rockmore 250,000 Class A Warrants. These Class A Warrants were issued on the same terms and conditions as the Class A Warrants issued pursuant to the Securities Purchase Agreement. The warrants issued to Rockmore were classified as equity warrants in the consolidated balance sheet as of December 31, 2018.

The Debt can be prepaid by XpresSpa at a 4% penalty at any point at its election. The Debt is secured by substantially all of the assets of XpresSpa. In addition, XpresSpa needs consent of Rockmore to incur any additional debt, except for:

- debt to finance acquisition, construction, or improvement of fixed and capital assets;
- performance bonds, bid bonds, appeal bonds, surety bonds, and similar;
- pension fund and employee benefit plan obligations;
- unsecured debt not exceeding $1,000;
- convertible notes not exceeding $5,000; and
- letters of credit, bank guarantees and others in the ordinary course of business.

In addition, Rockmore was entitled to certain reporting rights and annual audited financial information, which Rockmore waived in March 2017.

During the years-ended December 31, 2018 and 2017, XpresSpa paid and recorded $731 of interest expense in connection with the Rockmore debt.

Convertible Notes

On May 15, 2018, the Company entered into the Securities Purchase Agreement with the Investors, pursuant to which the Company agreed to sell up to (i) an aggregate principal amount of $4,438 in the Convertible Notes, which includes $88 of Convertible Notes issued to Palladium Capital Advisors as Placement Agent, convertible into Common Stock at a conversion price of $12.40 per share, (ii) Class A Warrants to purchase 357,862 shares of Common Stock at an exercise price of $12.40 per share and (iii) Class B Warrants to purchase up to 178,931 shares of Common Stock at an exercise price of $12.40 per share. The Convertible Notes bear interest at a rate of 5% per annum. The Convertible Notes are senior secured obligations of the Company and are secured by certain of its personal property. Unless earlier converted or redeemed, the Convertible Notes will mature on November 16, 2019. The transaction closed on May 17, 2018.

The principal amount of the outstanding Convertible Notes was originally to be repaid monthly in the amount of $296, beginning on September 17, 2018, and the Company may make such payments and related interest payments in cash or, subject to certain conditions, in registered shares of Common Stock (or a combination thereof), at its election. If the Company chooses to repay the Convertible Notes in shares of Common Stock, the shares will be issued at a 10% discount to the volume weighted average price of Common Stock for the five (5) trading days commencing eight (8) days prior to the relevant repayment date and ending on the fourth (4^{th}) trading day prior to such repayment date, subject to a minimum floor price of not less than 20% of the conversion price of the Convertible Notes on the issue date. The Company may also repay the Convertible Notes in advance of the maturity schedule subject to an early repayment penalty of 15%.

On August 14, 2018, the Company and each of the Investors entered into an Amendment Agreement ("First Amendment Agreement") whereby the initial monthly principal repayment and accrued interest due on the Convertible Notes of $351 was settled in 2,067 shares of Common Stock on August 15, 2018. All other material terms of the Securities Purchase Agreement remained unchanged. During the three-month period ended September 30, 2018, several of the Investors converted their monthly principal payments and accrued interest due on the Convertible Notes into shares of Common Stock pursuant to the First Amendment Agreement, resulting in the issuance of an additional 2,737 shares of Common Stock.

On December 11, 2018, the Company entered into a Second Amendment Agreement ("Second Amendment Agreement") whereby certain investors waived the Company's obligation to make any monthly payments for the months of January, February and March 2019. Pursuant to the Second Amendment Agreement, each of such investors was permitted to convert its pro-rata share of the Convertible Notes, at a conversion price of $4.00 per share of Common Stock, such that the maximum number of shares to be issued pursuant to this amendment shall not exceed 250,000 shares of Common Stock. All other material terms of the Securities Purchase Agreement remained unchanged. During the three-month period ended December 31, 2018, one of the investors converted a portion of their allotted shares, in settlement of $23,000, into shares of Common Stock pursuant to the Second Amendment Agreement, resulting in the issuance of an additional 5,627 shares of Common Stock.

The table below summarizes the initial fair value of the Convertible Notes and Warrants as of May 17, 2018:

Class A Warrants	$	1,827
Class B Warrants		135
Convertible Notes		2,388
Total Fair Value	$	4,350

The table below summarizes changes in the book value of the Convertible Notes from May 17, 2018 to December 31, 2018:

Book value as of May 17, 2018	$	2,388
Debt issuance costs		(320)
Book value as of May 17, 2018		2,068
Debt repayments in the period		(1,068)
Amortization of debt discount and debt issuance costs, included in interest expense		986
Book value as of December 31, 2018	$	1,986

The debt discount and debt issuance costs will be amortized on a straight-line basis over the remaining term of the Convertible Notes. During the year ended December 31, 2018, the Company recorded $986 of amortization of debt discount and debt issuance costs, which was included in interest expense for the year ended December 31, 2018. Additionally, for the year ended December 31, 2018, the Company recorded $110 of interest expense related to the Convertible Notes, which was included in interest expense.

Note 9. Fair Value Measurements

The following table presents the placement in the fair value hierarchy of liabilities measured at fair value on a recurring basis as of December 31, 2018 and 2017:

May 2015 Warrants

		Fair value measurement at reporting date using		
	Balance	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
December 31, 2018:				
May 2015 Warrants	$ —	$ —	$ —	$ —
December 31, 2017:				
May 2015 Warrants	$ 34	$ —	$ —	$ 34

May 2018 Warrants

		Fair value measurement at reporting date using		
	Balance	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
December 31, 2018:				
A Warrants	$ 476	$ —	$ —	$ 476
B Warrants	—	—	—	—
Total	$ 476	$ —	$ —	$ 476
May 17, 2018:				
A Warrants	$ 1,827	$ —	$ —	$ 1,827
B Warrants	135	—	—	135
Total	$ 1,962	$ —	$ —	$ 1,962

The Company measures its derivative warrant liabilities at fair value. The derivative warrant liabilities were classified within Level 3 because they were valued using the Black-Scholes-Merton model, which utilizes significant inputs that are unobservable in the market. These derivative warrant liabilities were initially measured at fair value and are marked to market at each balance sheet date. The derivative warrant liabilities are recorded as derivative warrant liabilities in the consolidated balance sheets and the revaluation of the derivative warrants liabilities is included in other non-operating income (expense) in the consolidated statements of operations and comprehensive loss.

In addition to the above, the Company's financial instruments as of December 31, 2018 and 2017 consisted of cash and cash equivalents, receivables, accounts payable and Debt. The carrying amounts of all the aforementioned financial instruments approximate fair value because of the short-term maturities of these instruments.

The following table summarizes the changes in the Company's derivative warrant liabilities measured at fair value using significant unobservable inputs (Level 3) during the year ended December 31, 2018:

December 31, 2017	$	34
Issuance of warrants May 17, 2018		1,962
Decrease in fair value of the derivative warrant liabilities		(1,520)
December 31, 2018	$	476

Valuation processes for Level 3 Fair Value Measurements

Fair value measurement of the derivative warrant liabilities falls within Level 3 of the fair value hierarchy. The fair value measurements are evaluated by management to ensure that changes are consistent with expectations of management based upon the sensitivity and nature of the inputs.

May 2015 Warrants

December 31, 2018:

Description	Valuation technique	Unobservable inputs	Range
May 2015 Warrants	Black-Scholes-Merton	Volatility	71.16%
		Risk-free interest rate	2.49%
		Expected term, in years	1.34
		Dividend yield	0.00%

December 31, 2017:

Description	Valuation technique	Unobservable inputs	Range
May 2015 Warrants	Black-Scholes-Merton	Volatility	39.64%
		Risk-free interest rate	1.88%
		Expected term, in years	2.34
		Dividend yield	0.00%

May 2018 Warrants

December 31, 2018: Dividend yield 0.00%

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities – A Warrants	Black-Scholes-Merton	Volatility	70.61%
		Risk-free interest rate	2.53%
		Expected term, in years	4.38
		Dividend yield	0.00%

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities –			
B Warrants	Black-Scholes-Merton	Volatility	84.02%
		Risk-free interest rate	2.25%
		Expected term, in years	0.12
		Dividend yield	0.00%

May 17, 2018:

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities –			
A Warrants	Black-Scholes-Merton	Volatility	71.13%
		Risk-free interest rate	2.98%
		Expected term, in years	5.00
		Dividend yield	0.00%

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities –			
B Warrants	Black-Scholes-Merton	Volatility	72.88%
		Risk-free interest rate	1.99%
		Expected term, in years	0.50
		Dividend yield	0.00%

Sensitivity of Level 3 measurements to changes in significant unobservable inputs

The inputs to estimate the fair value of the Company's derivative warrant liabilities were the current market price of the Company's Common Stock, the exercise price of the derivative warrant liabilities, their remaining expected term, the volatility of the Company's Common Stock price and the risk-free interest rate over the expected term. Significant changes in any of those inputs in isolation can result in a significant change in the fair value measurement.

Generally, an increase in the market price of the Company's shares of Common Stock, an increase in the volatility of the Company's shares of Common Stock, and an increase in the remaining term of the derivative warrant liabilities would each result in a directionally similar change in the estimated fair value of the Company's derivative warrant liabilities. Such changes would increase the associated liability while decreases in these assumptions would decrease the associated liability. An increase in the risk-free interest rate or a decrease in the differential between the derivative warrant liabilities' exercise price and the market price of the Company's shares of Common Stock would result in a decrease in the estimated fair value measurement and thus a decrease in the associated liability. The Company has not, and does not plan to, declare dividends on its Common Stock and, as such, there is no change in the estimated fair value of the derivative warrant liabilities due to the dividend assumption.

Marathon Common Stock

On January 11, 2018 (the "Transaction Date"), the Company entered into a Patent Rights Purchase and Assignment Agreement (the "Agreement") with Crypto Currency Patent Holding Company LLC (the "Buyer") and its parent company, Marathon, pursuant to which the Buyer agreed to purchase certain of the Company's patents. As consideration for the patents, the Buyer paid $250 and Marathon issued 250,000 shares of Marathon Common Stock (the "Marathon Common Stock") to the Company. The Marathon Common Stock was subject to a lockup period (the "Lockup Period") which commenced on the Transaction Date and ended on July 11, 2018, subject to a leak-out provision.

The Marathon Common Stock is recognized as a cost method investment and, as such, was required to be measured at cost on the date of acquisition, which, as of the Transaction Date, approximated fair value. The following table presents the placement in the fair value hierarchy of the Marathon Common Stock measured at fair value on a nonrecurring basis as of the Transaction Date:

		Fair value measurement at reporting date using		
	Balance	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
January 11, 2018	$ 450	$ —	$ 450	$ —
December 31, 2018	$ 23	$ 23	$ —	$ —

The fair value of the Marathon Common Stock was estimated by multiplying the number of shares as they become tradeable by the price per share as of the Transaction Date, information that falls within Level 1 of the fair value hierarchy, quoted prices in active markets for identical assets; however, due to the fact that the Marathon Common Stock was restricted during the Lockup Period, the Company applied a discount on the lack of marketability to estimate the fair value at the measurement date, which is a significant other observable input resulting in placement in Level 2 of the fair value hierarchy. The fair value of the consideration as of the Transaction Date was determined to be $450. Based on the Company's evaluation of the investment, it was determined that certain unrealized losses represented an other-than-temporary impairment as of December 31, 2018 and the Company recognized an impairment charge of $148 for the year ended December 31, 2018, equal to the excess of carrying value over fair value. The fair value of the remaining Marathon Common Stock held as of December 31, 2018 was determined to be $23, which is included in other assets in the consolidated balance sheet as of December 31, 2018.

On July 11, 2018, the Lockup Period concluded and the Company was permitted to begin trading the Marathon Common Stock, subject to a leak-out provision whereby the shares were released from lockup in equal increments over a twenty-day period. As of December 31, 2018, the remaining 44,354 shares of Marathon Common Stock were no longer restricted pursuant to the Lockup Period and leak-out provision, and the Company determined that the investments are classified within Level 1 of the fair value hierarchy.

During the year ended December 31, 2018, the Company sold 205,646 shares of Marathon Common Stock, with a carrying value of $279, for net proceeds of $200.

The following table summarizes the changes in the Company's investment in Marathon Common Stock, measured at fair value using significant other observable inputs (Level 2) as of Transaction Date and measured at fair value using quoted prices in active markets for identical assets (Level 1) during the year ended December 31, 2018:

January 11, 2018	$ 450
Carrying value of Marathon Common Stock sold	(279)
Decrease in fair value of the Marathon Common Stock	(148)
December 31, 2018	$ 23

Other Fair Value Measurements

The following table presents the placement in the fair value hierarchy of the contingent consideration assumed by the Company following the acquisition of Excalibur Integrated Systems, Inc. ("Excalibur"), which is measured at fair value on a recurring basis as of December 31, 2018 and 2017:

		Fair value measurement at reporting date using		
	Balance	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
December 31, 2018:				
Contingent consideration	$ 316	$ —	$ —	$ 316
December 31, 2017:				
Contingent consideration	$ 316	$ —	$ —	$ 316

The purchase value of the contingent consideration assumed by the Company following the acquisition of Excalibur was determined using the Monte-Carlo simulation and, as such, was classified as Level 3 of the fair value hierarchy. The fair value measurements are evaluated by management to ensure that changes are consistent with expectations of management based upon the sensitivity and nature of the inputs.

Note 10. Warrants*

The following table summarizes information about warrant activity during the years ended December 31, 2018 and 2017:

	No. of warrants*	Weighted average exercise price*	Exercise price range*
December 31, 2017	154,375	$ 60.60	$ 60.00 – 100.00
Granted	549,294	$ 12.40	$ 12.40
Exercised	—	—	—
Expired	—	—	—
December 31, 2018	703,669	$ 23.00	$ 12.40 – 100.00

The Company's outstanding equity warrants as of December 31, 2018 consist of the following:

	No. outstanding*	Exercise price*	Remaining contractual life	Expiration Date
October 2015 Warrants	2,500	$ 100.00	2.29 years	April 15, 2021
December 2016 Warrants	125,000	$ 60.00	2.98 years	December 23, 2021
May 2018 Warrants	12,500	$ 12.40	4.88 years	November 17, 2023
Outstanding as of December 31, 2018	140,000			

The Company's outstanding derivative warrants as of December 31, 2018 consist of the following:

	No. outstanding*	Exercise price*	Remaining contractual life	Expiration Date
May 2015 Warrants	26,875	$ 60.00	1.34 years	May 4, 2020

*Adjusted to reflect the impact of the 1:20 reverse stock split that became effective on February 22, 2019.

Note 11. Stock-based Compensation*

The Company has a stock-based compensation plan available to grant stock options and RSUs to the Company's directors, employees and consultants. Under the 2012 Employee, Director and Consultant Equity Incentive Plan (the "Plan"), a maximum of 78,000 shares of Common Stock may be awarded. In 2015 and 2016, the Company amended the Plan so that a maximum number of shares of Common Stock that may be awarded was increased to 355,000. As of December 31, 2018, 191,569 shares were available for future grants under the Plan.

Total stock-based compensation expense for the years ended December 31, 2018 and 2017 was $916 and $2,745, respectively, of which stock-based compensation expense included in the discontinued operations was $0 and $586, respectively.

There were no stock options granted during the year ended December 31, 2018.

The following table illustrates the RSUs granted during the year ended December 31, 2018:

Grant date	No. of RSUs*	Fair market value at grant date*	Vesting term
February 28, 2018	2,670	$ 18.80	Vesting immediately upon grant
April 19, 2018	7,500	$ 12.00	Vesting immediately upon grant
May 15, 2018	23,250	$ 12.00	Over one year, vesting on one-year anniversary of grant date

The following tables summarize information about stock options and RSU activity during the year ended December 31, 2018:

	RSUs		Options			
	No. of RSUs*	Weighted average grant date fair value*	No. of options*	Weighted average exercise price*	Exercise price range*	Weighted average grant date fair value*
Outstanding as of January 1, 2018	18,278	$ 42.40	215,897	$ 113.40	$ 22.00 – 820.00	$ 77.20
Granted	33,420	$ 12.60	—	—	—	—
Vested/Exercised	(28,448)	$ 32.20	—	—	—	—
Forfeited	(5,500)	$ 12.00	(111,302)	$ 119.00	$ 31.00 – 820.00	$ 78.60
Expired	—	—	(2,616)	$ 324.80	$ 192.00 – 330.00	$ 194.20
Outstanding as of December 31, 2018	17,750	$ 12.00	101,979	$ 99.80	$ 22.00 – 820.00	$ 62.40
Exercisable as of December 31, 2018	—	—	94,688	$ 101.80	$ 22.00 – 820.00	$ 63.20

	Non-vested stock options:		Non-vested RSU:	
	No. of options*	Weighted average grant date fair value*	No. of RSUs*	Weighted average grant date fair value*
Balance at January 1, 2018	65,313	$ 23.80	18,278	$ 42.40
Granted	—	$ —	33,420	$ 12.60
Vested	(24,729)	$ 24.00	(28,448)	32.20
Forfeited	(33,292)	$ 25.60	(5,500)	$ 12.00
Balance at December 31, 2018	7,292	$ 20.00	17,750	$ 12.00

The following table summarizes information about employee and non-employee stock options outstanding as of December 31, 2018:

Exercise price range	No. options outstanding*	No. options exercisable*	Weighted average remaining contractual life (years)
$ 0.01-200.00	91,979	84,688	8.00
$ 200.00-400.00	—	—	—
$ 400.00-600.00	2,000	2,000	5.57
$ 600.00-800.00	5,300	5,300	5.35
$ 800.00-1000.00	2,700	2,700	6.14
	101,979	94,688	

*Adjusted to reflect the impact of the 1:20 reverse stock split that became effective on February 22, 2019.

As of December 31, 2018, there was no aggregate intrinsic value associated with either the options outstanding or the options exercisable, as they were out-of-the-money. As of December 31, 2017, the total aggregate intrinsic values of options outstanding was $14, and there was no aggregate intrinsic value associated with the options exercisable as they were out-of-the-money. There were no options exercised during the years ended December 31, 2018 and 2017.

The total fair value of stock options that vested in the years ended December 31, 2018 and 2017 was $565 and $1,932, respectively. As of December 31, 2018, there was approximately $153 of total unrecognized stock-based payment cost related to non-vested options, shares, and RSUs granted under the incentive stock option plans. Overall, the cost is expected to be recognized over a weighted average of 1.00 years.

The Company did not recognize tax benefits related to its stock-based compensation as there is a full valuation allowance recorded.

Note 12. Related Parties Transactions

On April 14, 2018, the Company entered into a consulting agreement with an employee of Mistral Equity Partners, which is a significant shareholder of the Company and whose Chief Executive Officer is a member of the Board of Directors of the Company, to consult on certain business-related matters. The total consideration is approximately $10 per month through December 31, 2018. The agreement may be terminated by either party at any time upon delivery of written notice. Pursuant to the agreement, the Company recorded consulting expense of $85 for the year ended December 31, 2018. The consulting agreement was extended through June 30, 2019. No other material terms of the agreement were modified.

In connection with the Collaboration Agreement with Calm, the Company sold Calm subscriptions and certain Calm-branded retail products in its spas, beginning in November 2018. During the year ended December 31, 2018, the Company recorded revenue of $11 from the sale of Calm's branded products in its spas which is included in products and services revenue in the consolidated statements of operations and comprehensive loss for the year ended December 31, 2018.

Note 13. Property and Equipment

The following table summarizes information about property and equipment activity during the years ended December 31, 2018 and 2017:

Balance of property and equipment as of December 31, 2016	$ 16,266
Additions	5,104
Depreciation expense	(5,573)
Balance of property and equipment as of December 31, 2017	15,797
Additions	3,031
Depreciation expense	(7,033)
Balance of property and equipment as of December 31, 2018	$ 11,795

Property and equipment is comprised of three categories: leasehold improvements, furniture and fixtures, and other operating equipment.

During the years ended December 31, 2018 and 2017, the Company recorded $7,033 and $5,573 of depreciation expense from continuing operations, respectively. Included in the depreciation expense from continuing operations for the year ended December 31, 2018 was a $2,100 expense for impairment of fixed assets in locations where the Company has obligations under long-term leases. Included in the depreciation expense from continuing operations for the year ended December 31, 2017 is $1,131 of accelerated depreciation related to the closure of one of XpresSpa's JFK locations in June 2017. The assets related to the JFK location are not included in the net book value of property and equipment and accumulated depreciation, as noted in the table below.

As of December 31, 2018 and 2017, the Company had capitalized $770 and $860, respectively, related to construction-in-progress based on percentage of completion of each in-progress project. In October 2017, the Company recorded a $235 reduction of construction-in-progress within property and equipment and an increase to goodwill, which represents amounts as of the acquisition date of XpresSpa that were related to two old projects for stores that never actually opened.

	December 31,		
	2018	**2017**	**Useful Life**
Furniture and fixtures	$ 1,264	$ 1,164	3-4 years
Leasehold improvements	18,932	17,704	Average 5-8 years
Other operating equipment	2,322	1,488	Maximum 5 years
	22,518	20,356	
Accumulated depreciation	(10,723)	(4,559)	
Total property and equipment, net	$ 11,795	$ 15,797	

Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Leasehold improvements are depreciated over the shorter of remaining lease term or economic useful life (which is on average 5-8 years).

Note 14. Other Current Assets

As of December 31, 2018 and 2017, the Company's other current assets were comprised of the following:

	December 31,	
	2018	2017
Prepaid expenses	$ 1,204	$ 1,212
Notes receivable	—	800
Other	261	108
Total other current assets	$ 1,465	$ 2,120

Prepaid expenses are predominantly comprised of prepaid insurance policies which have terms of one year or less. The note receivable, which related to the sale of FLI Charge, was collected in February 2018.

Note 15. Accounts Payable, Accrued Expenses and Other Current Liabilities

As of December 31, 2018 and 2017, the Company's accounts payable, accrued expenses and other current liabilities were comprised of the following:

	December 31,	
	2018	2017
Accounts payable	$ 3,825	$ 3,362
Accrued expenses	1,704	3,160
Accrued compensation	1,126	1,074
Tax-related liabilities	719	615
Gift certificates and loyalty reward program liabilities	674	474
Other	84	51
Total accounts payable, accrued expenses and other current liabilities	$ 8,132	$ 8,736

Accrued liability for insurance

XpresSpa carries several annual insurance policies including indemnity, fire, umbrella, and workers' compensation. XpresSpa financed a total of $1,184, or 80%, of the total insurance premiums with a third-party provider, at a weighted average rate of 4.06% per year payable in ten monthly installments. As of December 31, 2018, XpresSpa had an outstanding balance of its financing arrangement of approximately $897, which is included in accounts payable, accrued expenses and other current liabilities on the consolidated balance sheets, scheduled to be repaid in 2019.

Merchant financing

In February 2017, XpresSpa entered into a merchant financing arrangement with a top tier credit card company for $500. As of December 31, 2017, the outstanding balance of the advance was $112. This balance was repaid in full in February 2018. No further merchant financing has been obtained.

Note 16. Discontinued Operations and Assets and Liabilities Held for Disposal

FLI Charge

In June 2017, the Company concluded that the requirement to report the results of FLI Charge, a wholly-owned subsidiary included in its technology operating segment, as discontinued operations was triggered. As a result, a non-cash impairment loss to discontinued operations of $1,092 relating to FLI Charge's technology assets and goodwill was recorded during the year ended December 31, 2017.

On October 20, 2017 (the "Closing Date"), the Company sold FLI Charge to a group of private investors and FLI Charge management, to own and operate FLI Charge. The Company did not provide any continued management or financing support to FLI Charge after the Closing Date.

Total consideration for the sale of FLI Charge was $1,250, payable in installments. The consideration was secured by a note and security agreement. Additionally, the Company is entitled to a 5% royalty, in perpetuity, on the gross revenue of FLI Charge and of any affiliate of FLI Charge with regard to conductive wireless charging, power, or accessories. The Company also received a warrant exercisable in FLI Charge or an affiliate of FLI Charge upon an initial public offering or certain defined events in connection with a change of control. The warrant has a five-year life and is based on a valuation of the lesser of $30,000 or the financing valuation of FLI Charge preceding the initial public offering or certain defined events.

The fair value of the total consideration was determined to be $1,052, which resulted in a gain on disposal of $629 in consolidated net loss from discontinued operations. The fair value of the consideration for the FLI Charge disposition was determined using a combination of valuation methods including: (i) the face value of the upfront cash installment of $250; (ii) the present value of the deferred cash installments was calculated by multiplying the face value of the installments by the acquirer's default probability and discounted by the risk-free rate; (iii) the Black-Scholes model was used to obtain the value of the warrants; and (iv) the value of the 5% royalty was calculated using a discounted cash flow model. The Company's fair value measurements are evaluated by management to ensure that they are consistent with expectations of management based upon the sensitivity and nature of the inputs.

Group Mobile

In December 2017, the Company concluded that the requirement to report the results of Group Mobile, a wholly-owned subsidiary included in its technology operating segment, as discontinued operations was triggered.

On March 7, 2018 (the "Signing Date"), the Company entered into a membership purchase agreement (the "Purchase Agreement") with Route1 Security Corporation, a Delaware corporation (the "Buyer"), and Route1 Inc., an Ontario corporation ("Route1"), pursuant to which the Buyer agreed to acquire Group Mobile (the "Disposition"). The transaction closed on March 22, 2018 (the "Closing Date"), after which the Company no longer had any involvement with Group Mobile.

In consideration for the Disposition, the Buyer issued to the Company:

- 2,250,000 shares of common stock of Route1 ("Route1 common stock");
- warrants to purchase 30,000,000 shares of Route1 common stock, which will feature an exercise price of CAD 5 cents per share of common stock and will be exercisable for a three-year period; and
- certain other payments over the three-year period pursuant to an earn-out provision in the Purchase Agreement.

The Company retained certain inventory with a value of $555 to be disposed of separately from the transaction with Route1 in the first half of 2018. Of this amount, $110 was sold and the remaining inventory excluded from the transaction was subsequently determined to be obsolete and unsalable and was fully written off in June 2018. Assets held for disposal includes $109 of accounts receivable, net of allowance, associated with the sale of the inventory excluded from the transaction with Route1.

Post-closing, the Company owned approximately 6.7% of Route1 common stock. The Route1 common stock is not tradable until a date no earlier than 12 months after the Closing Date; 50%, or 12,500,000 shares, of Route1 common stock are tradeable after 12 months plus an additional 2,083,333 shares of Route1 common stock are tradeable each month until 18 months after the Closing Date, subject to a change of control provision. The Company has the ability to sell the Route1 common stock and warrants to qualified institutional investors. The Group Mobile Purchase Agreement also contains representations, warranties, and covenants customary for transactions of this type.

The total consideration of the Disposition is recognized as a cost method investment and, as such, must be measured at cost on the date of acquisition, which, as of the Closing Date, approximates fair value. The fair value of the total consideration as of the Closing Date was determined to be $1,625, which is less than the carrying value of the asset, and is included in other assets in the consolidated balance sheet as of December 31, 2018. This resulted in a loss on disposal of $301, which is included in consolidated net loss from discontinued operations in the consolidated statement of operations and comprehensive loss for the year ended December 31, 2018.

The value of the total consideration for the Group Mobile disposition was determined using a combination of valuation methods including:

(i) The value of the Route 1 common stock was determined to be $308, which was estimated by multiplying the number of shares as they become tradeable by the price per share as of the Closing Date.

(ii) The value of the warrants was determined to be $176, which was obtained using the Black-Scholes-Merton model.

(iii) The value of the earn-out provision was determined to be $1,141, which was estimated using a Monte-Carlo simulation analysis.

The sale of Group Mobile was completed on March 22, 2018, after which the Company had no further involvement with Group Mobile.

Operating Results and Assets and Liabilities Held for Sale

The following table represents the components of operating results from discontinued operations, as presented in the consolidated statements of operations and comprehensive loss for the years ended December 31, 2018 and 2017:

	For the years ended December 31,	
	2018	**2017**
Revenue	$ 2,834	$ 15,454
Cost of sales	(2,305)	(12,373)
Depreciation and amortization	(131)	(770)
Impairment	—	(8,577)
General and administrative	(1,190)	(5,986)
Loss on disposal	(301)	—
Non-operating expense	(22)	(13)
Loss from discontinued operations before income taxes	(1,115)	(12,265)
Income tax expense	—	(12)
Consolidated net loss from discontinued operations	$ (1,115)	$ (12,277)

In addition, the following table presents the carrying amounts of the major classes of assets and liabilities held for sale as of December 31, 2018 and 2017, as presented in the consolidated balance sheets:

	December 31,	
	2018	**2017**
Cash	$ —	$ 150
Accounts receivable, net	109	2,920
Inventory	—	1,935
Other current assets	—	3
Property and equipment, net	—	874
Intangible assets, net	—	564
Assets held for disposal	$ 109	$ 6,446
Accounts payable, accrued expenses and other current liabilities	$ 40	$ 3,142
Deferred revenue	—	619
Liabilities held for disposal	$ 40	$ 3,761

Note 17. Income Taxes

For the years ended December 31, 2018 and 2017, the loss from continuing operations before income taxes consists of the following:

	2018	**2017**
Domestic	$ (36,506)	$ (16,536)
Foreign	597	535
	$ (35,909)	$ (16,001)

Income tax expense attributable to continuing and discontinued operations for the years ended December 31, 2018 and 2017 consisted of the following:

	2018	2017
Continuing operations		
Current:		
Federal	$ (6)	$ —
State	22	—
Foreign	22	62
Deferred:		
Federal	(316)	49
State	—	—
Foreign	—	—
	$ (278)	$ 111

	2018	2017
Discontinued operations		
Current:		
Federal	$ —	$ 11
State	—	1
Foreign	—	—
Deferred:		
Federal	—	—
State	—	—
Foreign	—	—
	$ —	$ 12

Income tax expense attributable to continuing operations differed from the amounts computed by applying the applicable United States federal income tax rate to loss from continuing operations before taxes on income as a result of the following:

	For the years ended December 31,	
	2018	2017
Loss from continuing operations before income taxes	$ (35,909)	$ (16,001)
Tax rate	21%	35%
Computed “expected” tax benefit	(7,541)	(5,600)
State taxes, net of federal income tax benefit	(1,422)	(647)
Change in valuation allowance	7,539	(19,554)
Nondeductible expenses	242	800
Tax Reform Rate impact	—	24,486
Other items	904	626
Income tax expense (benefit) for continuing operations	$ (278)	$ 111

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities as of December 31, 2018 and 2017 are as follows:

	December 31,	
	2018	2017
Deferred income tax assets		
Net operating loss carryforwards	$ 39,972	$ 35,743
Stock-based compensation	4,468	4,238
Intangible assets and other	4,308	1,020
Net deferred income tax assets	48,748	41,001
Less:		
Valuation allowance	(48,748)	(41,209)
Net deferred income tax assets	$ —	$ (208)

The Company assesses the need for a valuation allowance related to its deferred income tax assets by considering whether it is more likely than not that some portion or all of the deferred income tax assets will not be realized. A valuation allowance has been recorded against the Company's deferred income tax assets, as it is in the opinion of management that it is more likely than not that the net operating loss carryforwards ("NOLs") will not be utilized in the foreseeable future.

The cumulative valuation allowance as of December 31, 2018 is $48,748, which will be reduced if and when the Company determines that the deferred income tax assets are more likely than not to be realized.

The following table presents the changes to the valuation allowance during the years presented:

As of January 1, 2017	$ 58,914
Charged to cost and expenses – continuing operations	(19,206)
Charged to cost and expenses – discontinued operations	1,455
Return to provision true-up and other	46
As of December 31, 2017	41,209
Charged to cost and expenses – continuing operations	8,300
Charged to cost and expenses – discontinued operations	342
Return to provision true-up and other	(1,103)
As of December 31, 2018	$ 48,748

As of December 31, 2018, the Company's estimated aggregate total NOLs were $150,926 for U.S. federal purposes, expiring 20 years from the respective tax years to which they relate, and $23,139 for U.S. federal purposes with an indefinite life due to new regulations in the TCJA of 2017. The NOL amounts are presented before Internal Revenue Code, Section 382 limitations ("Section 382"). The Tax Reform Act of 1986 imposed substantial restrictions on the utilization of NOL and tax credits in the event of an ownership change of a corporation. Thus, the Company's ability to utilize all such NOL and credit carryforwards may be limited. The NOLs available post-merger that the Company completed in 2012 that are not subject to limitation amount to $134,463. The remaining NOLs of $39,601 are subject to the limitation of Section 382. The annual limitation is approximately $2,000.

The Company files its tax returns in the U.S. federal jurisdiction, as well as in various state and local jurisdictions. XpresSpa Group has open tax years for 2015 through 2017.

On December 22, 2017, the United States government enacted the Tax Act, which made changes to the corporate tax rate, business-related deductions and taxation of foreign earnings, among other changes, that was generally effective for tax years beginning after December 31, 2017. After the one-year evaluation under SAB 118, the Company determined that there was no material impact from the TCJA.

As a result of the reduction to the corporate tax rate, the Company was required to remeasure its deferred tax assets and liabilities and any associated adjustment to the valuation allowance. As the Company was in a full valuation allowance in both 2018 and 2017, the net impact to the financial statements associated with the rate change was immaterial.

Note 18. Commitments and Contingencies

Litigation and legal proceedings

Certain of the Company's outstanding legal matters include speculative claims for substantial or indeterminate amounts of damages. The Company regularly evaluates developments in its legal matters that could affect the amount of any potential liability and makes adjustments as appropriate. Significant judgment is required to determine both the likelihood of there being any potential liability and the estimated amount of a loss related to the Company's legal matters.

With respect to the Company's outstanding legal matters, based on its current knowledge, the Company's management believes that the amount or range of a potential loss will not, either individually or in the aggregate, have a material adverse effect on its business, consolidated financial position, results of operations or cash flows. However, the outcome of such legal matters is inherently unpredictable and subject to significant uncertainties. The Company evaluated the outstanding legal matters and assessed the probability and likelihood of the occurrence of liability. Based on management's estimates, the Company recorded $290 as of December 31, 2018 and $250 as of December 31, 2017, which are included in accounts payable, accrued expenses and other current liabilities in the consolidated balance sheets.

The Company expenses legal fees in the period in which they are incurred.

Cordial

Effective October 2014, XpresSpa terminated its former Airport Concession Disadvantaged Business Enterprise ("ACDBE") partner, Cordial Endeavor Concessions of Atlanta, LLC ("Cordial"), in several store locations at Hartsfield-Jackson Atlanta International Airport.

Cordial filed a series of complaints with the City of Atlanta, both before and after the termination, in which Cordial alleged, among other things, that the termination was not valid and that XpresSpa unlawfully retaliated against Cordial when Cordial raised concerns about the joint venture. In response to the numerous complaints it received from Cordial, the City of Atlanta required the parties to engage in two mediations.

After the termination of the relationship with Cordial, XpresSpa sought to substitute two new ACDBE partners in place of Cordial.

In April 2015, Cordial filed a complaint with the United States Federal Aviation Administration ("FAA"), which oversees the City of Atlanta with regard to airport ACDBE programs, and, in December 2015, the FAA instructed that the City of Atlanta review XpresSpa's request to substitute new partners in lieu of Cordial and Cordial's claims of retaliation. In response to the FAA instruction, pursuant to a corrective action plan approved by the FAA, the City of Atlanta held a hearing in February 2016 and ruled in favor of XpresSpa such substitution and claims of retaliation. Cordial submitted a further complaint to the FAA claiming that the City of Atlanta was biased against Cordial and that the City of Atlanta's decision was wrong. In August 2016, the parties met with the FAA. On October 4, 2016, the FAA sent a letter to the City of Atlanta directing that the City of Atlanta retract previous findings on Cordial's allegations and engage an independent third party to investigate issues previously decided by Atlanta. The FAA also directed that the City of Atlanta determine monies potentially due to Cordial.

On January 3, 2017, XpresSpa filed a lawsuit in the Supreme Court of the State of New York, County of New York, against Cordial and several related parties. The lawsuit alleges breach of contract, unjust enrichment, breach of fiduciary duty, fraudulent inducement, fraudulent concealment, tortious interference, and breach of good faith and fair dealing. XpresSpa is seeking damages, declaratory judgment, rescission/termination of certain agreements, disgorgement of revenue, fees and costs, and various other relief. On February 21, 2017, the defendants filed a motion to dismiss. On March 3, 2017, XpresSpa filed a first amended complaint against the defendants. On April 5, 2017, Cordial filed a motion to dismiss. On September 12, 2017, the Court held a hearing on the motion to dismiss. On November 2, 2017, the Court granted the motion to dismiss which was entered on November 13, 2017. On December 22, 2017, XpresSpa filed a notice of appeal, and on September 24, 2018, XpresSpa perfected its appellate rights and submitted a brief to the Supreme Court of New York, First Department appellate court. Oral arguments on the appeal are expected to take place in early 2019. Oral argument on the appeal went forward on March 20, 2019, and the court likely will rule in the coming months.

On March 30, 2018, Cordial filed a lawsuit against XpresSpa, a subsidiary of XpresSpa, and several additional parties in the Superior Court of Fulton County, Georgia, alleging the violation of Cordial's civil rights, tortious interference, breach of fiduciary duty, civil conspiracy, conversion, retaliation, and unjust enrichment. Cordial has threated to seek punitive damages, attorneys' fees and litigation expenses, accounting, indemnification, and declaratory judgment as to the status of the membership interests of XpresSpa and Cordial in the joint venture and Cordial's right to profit distributions and management fees from the joint venture. On May 3, 2018, the Court issued an order extending the time for the defendants to respond to Cordial's lawsuit until June 25, 2018. On May 4, 2018, the defendants moved the lawsuit to the United States District Court for the Northern District of Georgia. On June 5, 2018, the Court granted an extension of time for the defendants' response until August 17, 2018. On August 9, 2018, the Court granted an additional extension of time for the defendants' response until September 7, 2018, and thereafter provided another extension pending the Court's consideration of XpresSpa's Motion to Stay all action in the Georgia lawsuit, pending resolution of the New York lawsuit and the FAA action. On October 29, 2018, XpresSpa's Motion to Stay was denied. Prior to resolution of the Motion to Stay, Cordial filed a Motion for Temporary Restraining Order ("TRO Motion"), seeking to enjoin the defendants and specifically XpresSpa, from, among other things, distributing any cash flow, net profits, or management fees, or otherwise expending resources beyond necessary operation expenses. XpresSpa filed an opposition and, in a decision entered December 26, 2018, the Court denied Cordial's TRO Motion entirely. Defendants filed a Motion to Dismiss the Complaint in its entirety on November 20, 2018, which is pending decision by the Court.

In re Chen et al.

In March 2015, four former XpresSpa employees who worked at XpresSpa locations in John F. Kennedy International Airport and LaGuardia Airport filed a putative class and collective action wage-hour litigation in the United States District Court, Eastern District of New York. *In re Chen et al.*, CV 15-1347 (E.D.N.Y.). Plaintiffs claim that they and other spa technicians around the country were misclassified as exempt commissioned salespersons under Section 7(i) of the federal Fair Labor Standards Act ("FLSA"). Plaintiffs also assert class claims for unpaid overtime on behalf of New York spa technicians under the New York Labor Law, and discriminatory employment practices under New York State and City laws. On July 1, 2015, the plaintiffs moved to have the court authorize notice of the FLSA misclassification claim sent to all employees in the spa technician job classification at XpresSpa locations around the country in the last three years. Defendants opposed the motion. On February 16, 2016, the Magistrate Judge assigned to the case issued a Report & Recommendation, recommending that the District Court Judge grant the plaintiffs' motion. On March 1, 2016, the defendants filed Opposition to the Magistrate Judge's Report & Recommendation, arguing that the District Court Judge should reject the Magistrate Judge's findings. On September 23, 2016, the court ruled in favor of the plaintiffs and conditionally certified the class. The parties held a mediation on February 28, 2017 and reached an agreement on a settlement in principle. On September 6, 2017, the parties entered into a settlement agreement. On September 15, 2017, the parties filed a motion for settlement approval with the Court. XpresSpa subsequently paid the agreed-upon settlement amount to the settlement claims administrator to be held in escrow pending a fairness hearing and final approval by the Court. On March 30, 2018, the Court entered a Memorandum and Order denying the motion without prejudice to renewal due to questions and concerns the Court had about certain settlement terms. On April 24, 2018, the parties jointly submitted a supplemental letter to the Court advocating for the fairness and adequacy of the settlement and appeared in Court on April 25, 2018 for a hearing to discuss the settlement terms in greater detail with the assigned Magistrate Judge. At the conclusion of the hearing, the Court still had questions about the adequacy and fairness of the settlement terms, and the Judge asked that the parties jointly submit additional information to the Court addressing the open issues. The parties submitted such information to the Court on May 18, 2018 and are awaiting the Court's ruling on the open issues.

Binn v. FORM Holdings Corp. et al.

On November 6, 2017, Moreton Binn and Marisol F, LLC, former stockholders of XpresSpa, filed a lawsuit against the Company and its directors in the United States District Court for the Southern District of New York. The lawsuit alleged violations of various sections of the Securities Exchange Act of 1934 ("Exchange Act"), material omissions and misrepresentations (negligent and fraudulent), fraudulent omission, expropriation, breach of fiduciary duties, aiding and abetting, and unjust enrichment in the defendants' conduct related to the Company's acquisition of XpresSpa, and sought rescission of the transaction, damages, equitable and injunctive relief, fees and costs, and various other relief. On January 17, 2018, the defendants filed a motion to dismiss the complaint. On February 7, 2018, the plaintiffs amended their complaint. On February 28, 2018, the defendants filed a motion to dismiss the amended complaint. By March 30, 2018, the motion to dismiss was fully briefed. On August 7, 2018, the Court ruled on the defendants' motion, dismissing eight of the plaintiffs' ten claims and denying the defendants' motion to dismiss with respect to the two remaining claims, related to the Exchange Act. On October 30, 2018, the Court ordered that the plaintiffs could file an amended complaint and, in response, the defendants could move for summary judgment. Consistent with the Court's Order, on November 16, 2018, the plaintiffs filed a second amended complaint, modifying their allegations, and asserting claims pursuant to the Exchange Act, the Securities Act of 1933, and bringing a breach of contract claim. On December 17, 2018, the defendants filed a motion for summary judgment seeking dismissal of all claims. On February 1, 2019, the plaintiffs filed an opposition to defendants' motion and filed a counter motion for partial summary judgment concerning one of the alleged misstatements. The defendants' motion for summary judgment was fully briefed as of March 1, 2019. The plaintiffs' partial motion for summary judgment was fully briefed as of March 15, 2019.

Krainz v. FORM Holdings Corp. et al.

On March 20, 2019, a second suit was commenced in the United States District Court for the Southern District of New York against FORM Holdings Corp., seven of its directors and former directors, as well as a managing director of Mistral Equity Partners. The individual plaintiff, Roman Kainz, who was a shareholder of XpresSpa Holdings, LLC at the time of its merger with FORM Holdings Corp, alleges that Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 by making false statements concerning, *inter alia*, the merger and the independence of FORM Holdings Corp.'s board of directors, violated Section 12(2) of the Securities Act of 1933, breached the Merger Agreement by making false and misleading statements concerning the merger, and fraudulently induced Plaintiff into signing the joinder agreement related to the Merger. This suit seeks rescission of the transaction, damages, equitable and injunctive relief, fees and costs, and various other relief.

Route1

On May 23, 2018, Route1 and Group Mobile filed a Statement of Claim against the Company in the Ontario (Canada) Superior Court of Justice seeking monetary damages based on indemnity claims made by Route1 and Group Mobile pursuant to the Group Mobile Purchase Agreement, including an offset against funds payable to the Company by Route1 and Group Mobile pursuant to the Group Mobile Purchase Agreement. On August 13, 2018, the Company filed its Defense and Counterclaim, seeking the payment of such funds payable to the Company by Route1 and Group Mobile pursuant to the Group Mobile Purchase Agreement.

Rodger Jenkins v. XpresSpa Group, Inc.

In March 2019, Rodger Jenkins filed a lawsuit against the Company in the United States District Court for the Southern District of New York. The lawsuit alleges breach of contract of the stock purchase agreement related to the Company's acquisition of Excalibur Integrated Systems, Inc. and seeks specific performance, compensatory damages and other fees, expenses and costs.

Intellectual Property

The Company is engaged in litigation related to certain of the intellectual property that it owns, for which no liability is recorded, as the Company does not expect a material negative outcome.

In addition to those matters specifically set forth herein, the Company and its subsidiaries are involved in various other claims and legal actions that arise in the ordinary course of business. The Company does not believe that the ultimate resolution of these actions will have a material adverse effect on the Company's financial position, results of operations, liquidity, or capital resources. However, a significant increase in the number of these claims, or one or more successful claims under which the Company incurs greater liabilities than the Company currently anticipates, could materially adversely affect the Company's business, financial condition, results of operations and cash flows.

In the event that an action is brought against the Company or one of its subsidiaries, the Company will investigate the allegation and vigorously defend itself.

Leases

The Company is obligated under multiple lease agreements for its XpresSpa retail concessions. The lease agreements for the retail concessions have terms which expire at varying dates through December 31, 2028 and primarily require payment of rent as a percentage of sales and a minimum annual guarantee ("MAG") rent payment. The MAG rent under the terms of the agreements range from $3 to $320 per year and are adjusted on each anniversary date.

XpresSpa is contingently liable to a surety company under certain general indemnity agreements required by various airports relating to its lease agreements. XpresSpa agrees to indemnify the surety for any payments made on contracts of suretyship, guaranty, or indemnity. The Company believes that all contingent liabilities will be satisfied by its performance under the specified lease agreements.

The Company's corporate headquarters are located in New York, NY and its lease will expire in October 2019.

Rent expense from continuing operations for operating leases for years ended December 31, 2018 and 2017 were $8,405 and $7,996, respectively.

As of December 31, 2018, future minimum commitments under noncancelable lease agreements are as follows:

Years ending December 31,	Amount
2019	$ 3,563
2020	2,848
2021	2,188
2022	2,256
2023	1,538
Thereafter	2,642
Total	$ 15,035

Note 19. Subsequent Events

CEO Transition

On February 8, 2019, Edward Jankowski resigned as Chief Executive Officer of the Company and as a director of the Company. Mr. Jankowski's resignation was not as a result of any disagreement with the Company on any matters related to the Company's operations, policies or practices. Mr. Jankowski will receive termination benefits including $375 payable in equal installments over a twelve-month term commencing on February 13, 2019 and COBRA continuation coverage paid in full by the Company for up to a maximum of twelve months.

Effective as of February 11, 2019, Douglas Satzman was appointed by the Company's board of directors as the Chief Executive Officer of the Company and as a director of the Company.

Reverse Stock Split

On February 22, 2019, The Company filed a certificate of amendment to its amended and restated certificate of incorporation with the Secretary of State of the State of Delaware to effect a 1-for-20 reverse stock split of the Company's shares of Common Stock. Such amendment and ratio were previously approved by the Company's stockholders and board of directors, respectively.

As a result of the reverse stock split, every twenty (20) shares of the Company's pre-reverse split Common Stock were combined and reclassified into one (1) share of Common Stock. Proportionate voting rights and other rights of Common Stock holders were affected by the reverse stock split. Stockholders who would have otherwise held a fractional share of Common Stock received payment in cash in lieu of any such resulting fractional shares of Common Stock as the post-reverse split amounts of Common Stock were rounded down to the nearest full share. Such cash payment in lieu of a fractional share of Common Stock was calculated by multiplying such fractional interest in one share of Common Stock by the closing trading price of the Company's Common Stock on February 22, 2019, and rounded to the nearest cent. No fractional shares were issued in connection with the reverse stock split.

The Company's Common Stock began trading on the Nasdaq Capital Market on a post-reverse split basis at the open of business on February 25, 2019.

FLI Charge Amendment to Royalty Agreement and Termination of Warrant

In February 2019, the Company entered into an agreement to release FLI Charge's obligation to pay any royalties on FLI Charge's perpetual gross revenues with regard to conductive wireless charging, power, or accessories, and to cancel its warrants exercisable in FLI Charge in exchange for cash proceeds of $1,100, which were received in full on February 15, 2019.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned thereunto, duly authorized on the 1st day of April, 2019.

XpresSpa Group, Inc.

By: /s/ DOUGLAS SATZMAN
Douglas Satzman
Chief Executive Officer
(Principal Executive Officer)

Pursuant to the requirements of Securities Exchange Act of 1934, this Annual Report on Form 10-K has been signed below by the following persons on behalf of the registrant and in the capacities indicated below and on the dates indicated.

Signature	Title	Date
/s/ DOUGLAS SATZMAN **Douglas Satzman**	Chief Executive Officer and Director (Principal Executive Officer)	April 1, 2019
/s/ JANINE CANALE **Janine Canale**	Controller (Principal Financial Officer and Principal Accounting Officer)	April 1, 2019
/s/ BRUCE T. BERNSTEIN **Bruce T. Bernstein**	Director, Chairman of Board of Directors	April 1, 2019
/s/ SALVATORE GIARDINA **Salvatore Giardina**	Director	April 1, 2019
/s/ ANDREW R. HEYER **Andrew R. Heyer**	Director	April 1, 2019
/s/ DONALD E. STOUT **Donald E. Stout**	Director	April 1, 2019

Exhibit 3.1

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:18 AM 06/22/2010
FILED 09:06 AM 06/22/2010
SRV 100677019 - 4090975 FILE

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
VRINGO, INC.

Vringo, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "DGCL"), DOES HEREBY CERTIFY:

1. The name of the Corporation is Vringo, Inc. The Corporation's original Certificate of Incorporation was filed with the Delaware Secretary of State on January 9, 2006. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on May 9, 2006, July 12, 2006, August 9, 2006 and July 30, 2007. An amendment to the Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on February 21, 2008 and December 29, 2009.

2. That the Board of Directors duly adopted resolutions setting forth a proposed amendment and restatement of the Amended and Restated Certificate of Incorporation of the Corporation, declaring said amendment and restatement to be advisable and directing its officers to submit said amendment and restatement to the stockholders of the Corporation for consideration thereof. The resolution setting forth the proposed amendment and restatement is as follows:

"THEREFORE, BE IT RESOLVED, that the Amended and Restated Certificate of Incorporation of the Corporation is hereby amended to read in its entirety as follows, subject to the required consent of the stockholders of the Corporation:

FIRST: The name of the Corporation (hereinafter the "Corporation") is Vringo, Inc.

SECOND: The address, including street, number, city and county, of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801; and the name of the Registered Agent of the Corporation at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

FOURTH: The Corporation is authorized to issue two classes of stock to be designated, respectively, Common Stock, par value $0.01 per share ("Common Stock") and Preferred Stock, par value $0.01 per share ("Preferred Stock"). The total number of shares the Corporation shall have the authority to issue is thirty three million (33,000,000) shares, twenty eight million (28,000,000) shares of which shall be Common Stock and five million (5,000,000) shares of which shall be Preferred Stock.

(1) Common Stock. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock or any series. The holders of the Common Stock are entitled to one vote for each share held at all meetings of stockholders. There shall be no cumulative voting. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of the Corporation will be entitled to receive ratably all assets of the Corporation available for distribution to stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

(2) Preferred Stock. Shares of Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated in the resolution or resolutions providing for the establishment of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Authority is hereby expressly granted to the Board of Directors of the Corporation to issue, from time to time, shares of Preferred Stock in one or more series, and, in connection with the establishment of any such series by resolution or resolutions, to determine and fix such voting powers, full or limited, or no voting powers, and such other powers, designations, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, if any, including, without limitation, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated in such resolution or resolutions, all to the fullest extent permitted by the DGCL. Without limiting the generality of the foregoing, the resolution or resolutions providing for the establishment of any series of Preferred Stock may, to the extent permitted by law, provide that such series shall be superior to, rank equally with or be junior to the Preferred Stock of any other series. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may be different from those of any and all other series at any time outstanding. Except as otherwise expressly provided in the resolution or resolutions providing for the establishment of any series of Preferred Stock, no vote of the holders of shares of Preferred Stock or Common Stock shall be a prerequisite to the issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Certificate of Incorporation.

FIFTH: (1) The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors having that number of directors set out in the Bylaws of the Corporation as adopted or as set forth from time to time by a duly adopted amendment thereto by the Board of Directors or stockholders of the Corporation.

(2) No director (other than directors elected by one or more series of Preferred Stock) may be removed from office by the stockholders except for cause and, in addition to any other vote required by law, upon the affirmative vote of not less than 66 $^{2}/3\%$ of the total voting power of all outstanding securities of the Corporation then entitled to vote generally in the election of directors, voting together as a single class.

(3) Each director shall hold office until such director's successor shall have been duly elected and qualified or until such director's earlier death, resignation or removal. Vacancies on the Board of Directors resulting from death, resignation, removal or otherwise and newly created directorships resulting from any increase in the number of directors (other than directors elected by one or more series of Preferred Stock) may be filled solely by a vote of a majority of the directors then in office (although less than a quorum) or by a sole remaining director, and each director so elected shall serve for the remainder of the full term of the director whose death, resignation or removal shall have created such vacancy and until his or her successor shall have been elected and qualified. Whenever the holders of one or more classes or series of Preferred Stock shall have the right, voting separately as a class or series, to elect directors, the nomination, election, term of office, filling of vacancies, removal and other features of such directorships shall not be governed by this Article FIFTH unless otherwise provided for in the certificate of designation for such classes or series.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation and for the further definition of the powers of the Corporation and its directors and stockholders:

(1) The Board of Directors is expressly authorized to make, adopt, amend, alter, rescind or repeal the Bylaws of the Corporation. Notwithstanding the foregoing, the stockholders may adopt, amend, alter, rescind or repeal the Bylaws with, in addition to any other vote required by law, the affirmative vote of the holders of not less than 66 $^{2}/3\%$ of the total voting power of all outstanding securities of the Corporation then entitled to vote generally in the election of directors, voting together as a single class.

(2) Elections of directors need not be by written ballot unless the Bylaws of the Corporation so provide.

(3) Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the Chairman of the Board of Directors or the Chief Executive Officer or at the written request of a majority of the members of the Board of Directors and may not be called by any other person; provided, however, that if and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provisions of the Certificate of Incorporation or any amendment thereto or any certificate filed under Section 151(g) of the DGCL, then such special meeting may also be called by the person or persons, in the manner, at the times and for the purposes so specified.

EIGHTH: The Corporation shall, to the fullest extent permitted by the provisions of Section 145 of the DGCL, as the same may be amended and supplemented from time to time, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section as amended or supplemented (or any successor), and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

NINTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that this Article shall not eliminate or limit the liability of a director (i) for any breach of his or her duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derives an improper personal benefit.

If the DGCL is hereafter amended to authorize corporate action further limiting or eliminating the personal liability of directors, then the liability of the director to the Corporation shall be limited or eliminated to the fullest extent permitted by the DGCL, as so amended from time to time. Any amendment, repeal or modification of this Article shall be prospective only, and shall not adversely affect any right or protection of a director of the Corporation under this Article NINTH in respect of any act or omission occurring prior to the time of such amendment, repeal or modification.

TENTH: Each reference in this Amended and Restated Certificate of Incorporation to any provision of the DGCL refers to the specified provision of the DGCL, as the same now exists or as it may hereafter be amended or superseded.

ELEVENTH: The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware; and all rights conferred on stockholders, directors or any other persons herein are granted subject to this reservation.

3. That said Amended and Restated Certificate of Incorporation has been consented to and authorized by the holders of a majority of the issued and outstanding stock entitled to vote in accordance with the provisions of Section 228 of the DGCL.

4. That said Amended and Restated Certificate of Incorporation was duly adopted in accordance with the applicable provisions of Sections 242 and 245 of the DGCL.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Vringo, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Jonathan Medved, its Chief Executive Officer, on this 22nd day of June, 2010.

VRINGO, INC.

By: /s/ Jonathan Medved
Name: Jonathan Medved
Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:59 PM 07/19/2012
FILED 02:00 PM 07/19/2012
SRV 120852405 - 4090975 FILE

CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
VRINGO, INC.

VRINGO, INC., a Delaware corporation (the **"Corporation"**), does hereby certify that:

FIRST: The name of the Corporation is **VRINGO, INC.**

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 2006 and the Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 22, 2010.

THIRD: The Board of Directors of the Corporation (the **"Board"),** acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware (the **"DGCL"),** adopted resolutions amending the Corporation's Amended and Restated Certificate of Incorporation as follows:

The second sentence of Article Fourth of the Corporation's Amended and Restated Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

"The total number of shares the Corporation shall have the authority to issue is one hundred fifty-five million (155,000,000) shares, one hundred fifty million (150,000,000) shares of which shall be Common Stock and five million (5,000,000) shares of which shall be Preferred Stock."

FOURTH: Thereafter, pursuant to a resolution of the Board, this Certificate of Amendment was submitted to the stockholders of the Corporation for their approval, and was duly adopted in accordance with the provisions of Sections 222 and 242 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this **CERTIFICATE OF AMENDMENT** to be signed by its Chief Executive Officer as of the 19th day of July, 2012.

VRINGO, INC.

By: /s/ Andrew D. Perlman
Name: Andrew D. Perlman
Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:59 PM 07/19/2012
FILED 02:01 PM 07/19/2012
SRV 120852409 - 4090975 FILE

VRINGO, INC.

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF SERIES A CONVERTIBLE PREFERRED STOCK

Vringo, Inc. (the **"Corporation"**), a corporation organized and existing under the General Corporation Law of the State of Delaware (the **"DGCL"),** does hereby certify that, pursuant to authority conferred upon the Board of Directors of the Corporation (the **"Board")** by the Amended and Restated Certificate of Incorporation, as amended, of the Corporation, and pursuant to Sections 151 and 141 of the DGCL, the Board adopted resolutions (i) designating a series of the Corporation's previously authorized preferred stock, par value $0.01 per share, and (ii) providing for the designations, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof, of six thousand nine hundred and sixty eight (6,968) shares of Series A Convertible Preferred Stock of the Corporation, as follows:

RESOLVED, that the Corporation is authorized to issue six thousand nine hundred and sixty eight (6,968) shares of Series A Convertible Preferred Stock (the **"Series A Preferred Stock"),** par value $0.01 per share, which shall have the following powers, designations, preferences and other special rights:

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series A Preferred Stock". The initial number of authorized shares of the Series A Preferred Stock shall be six thousand nine hundred and sixty eight (6,968), which shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series A Preferred Stock. Each share of the Series A Preferred Stock shall have a par value of $0.01.

2. Ranking. The Series A Preferred Stock shall rank prior and superior to all of the common stock, par value $0.01 per share, of the Corporation **("Common Stock")** and any other capital stock of the Corporation (other than the Series A Preferred Stock) with respect to the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation. The rights of the shares of Common Stock and other capital stock of the Corporation (other than the Series A Preferred Stock) shall be subject to the preferences and relative rights of the Series A Preferred Stock.

3. Dividends. From and after the first date of issuance of any shares of Series A Preferred Stock (the **"Initial Issuance Date"),** the holders of Series A Preferred Stock (each, a **"Holder"** and collectively, the **"Holders")** shall be entitled to receive such dividends paid and distributions made to the holders of Common Stock, which right shall be prior to the rights of the holders of capital stock of the Corporation, including the Common Stock, junior in rank to the Series A Preferred Stock in respect of the preferences as to distributions and payments upon a Liquidation Event (such stock, including the Common Stock, being referred to hereinafter collectively as **"Junior Stock")** (if any) (but after and subject to the rights of holders of Senior Preferred Stock (as defined below), if any, and *pari passu* to the rights of holders of capital stock of the Corporation *pari passu* in rank to the Series A Preferred Stock in respect of the preferences as to distributions and payments upon a Liquidation Event (such stock being referred to hereinafter collectively as **"Pari Passu Stock")** (if any)), to the same extent as if such Holders had converted the Series A Preferred Stock into Common Stock (without regard to any limitations on conversion herein or elsewhere) and had held such shares of Common Stock on the record date for such dividends and distributions (provided, however, to the extent that a Holder's right to participate in any such dividend or distribution would result in the Holder exceeding the Maximum Percentage (as defined below), then the Holder shall not be entitled to participate in such dividend or distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such dividend or distribution to such extent) and the portion of such dividend or distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage, at which time such Holder shall be delivered such dividend or distribution to the extent as if there had been no such limitation). Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock. Following the occurrence of a Liquidation Event (as defined below) and the payment in full to a Holder of its applicable liquidation preference, other than as set forth in Section 4 below, such Holder shall cease to have any rights hereunder to participate in any future dividends or distributions made to the holders of Common Stock. The Corporation shall not declare or pay any dividends on any other shares of Junior Stock or any Pari Passu Stock unless the holders of Series A Preferred Stock then outstanding shall simultaneously receive a dividend on a pro rata basis as if the shares of Series A Preferred Stock had been converted into shares of Common Stock pursuant to Section 7 immediately prior to the record date for determining the stockholders eligible to receive such dividends.

4. Liquidation Preference. Upon any Liquidation Event, the Holders shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after and subject to the payment in full of all amounts required to be distributed to the holders of any other Preferred Stock of the Corporation ranking on liquidation prior and in preference to the Series A Preferred Stock (such Preferred Stock being referred to hereinafter as **"Senior Preferred Stock")** upon such liquidation, dissolution or winding up, but before any payment shall be made to the holders of Junior Stock, an amount in cash equal to the Stated Value. If upon any such Liquidation Event, the remaining assets of the Corporation available for the distribution to its stockholders after payment in full of amounts required to be paid or distributed to holders of Senior Preferred Stock shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled, the holders of shares of Series A Preferred Stock and any class of stock ranking on liquidation on a parity with the Series A Preferred Stock, shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective amounts which would otherwise be payable in respect to the shares held by them upon such distribution if all amounts payable on or with respect to said shares were paid in full. For purposes of this Certificate of Designations, the term **"Stated Value"** shall mean one thousand dollars ($1,000) per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series A Preferred Stock after the Initial Issuance Date. For purposes of this Certificate of Designations, a **"Liquidation Event"** means the voluntary or involuntary liquidation, dissolution or winding up of the Corporation or its Subsidiaries, the assets of which constitute all or substantially all of the assets of the business of the Corporation and its Subsidiaries taken as a whole, in a single transaction or series of transactions.

5. Fundamental Transactions; Put Triggering Event.

(a) Certain definitions. For purposes of this Certificate of Designations, the following definitions shall apply:

(i) **"Business Day"** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(ii) **"Cash Conversion Amount"** means the product of (A) the percentage of the consideration in the Put Triggering Event (in relation to all consideration being paid in such Put Triggering Event) being paid in cash multiplied by (B) the Conversion Amount as to which a Put Triggering Event Redemption Notice is being delivered.

(iii) **"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

(iv) **"Eligible Market"** means The New York Stock Exchange, Inc., the NYSE MKT, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market.

(v) **"Change of Control"** means any Fundamental Transaction other than (A) any reorganization, recapitalization or reclassification of the Common Stock in which holders of the Corporation's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, the voting power of the surviving entity or entities necessary to elect a majority of the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities, or (B) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Corporation.

(vi) **"Eligible Successor Common Stock"** means common stock of a Successor Entity that is a publicly traded corporation, whose common stock is quoted or listed for trading on an Eligible Market, and that assumes in writing all obligations of the Corporation under this Certificate of Designations in accordance with Section 5(b) hereof such that the applicable Series A Preferred Stock shall be convertible into publicly traded common stock (or its equivalent) of such Successor Entity.

(vii) **"Fundamental Transaction"** means that the Corporation shall (or in the case of clause (F) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act)), directly or indirectly, in one or more related transactions, (A) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another entity, or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation to another entity, or (C) allow another entity or entities to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other entity or other entities making or party to, or associated or affiliated with the other entities making or party to, such stock purchase agreement or other business combination), or (E) reorganize, recapitalize or reclassify its Common Stock, or (F) become the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock.

(viii) **"Parent Entity"** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(ix) **"Put Triggering Event"** means any Change of Control other than one in which a Successor Entity that is a publicly traded corporation, whose common stock is quoted or listed for trading on an Eligible Market, assumes in writing all obligations of the Corporation under this Certificate of Designations in accordance with Section 5(b) hereof such that the Series A Preferred Stock shall be convertible into publicly traded common stock (or its equivalent) of such Successor Entity.

(x) **"Required Holders"** means the holders of record of a majority of the outstanding shares of Series A Preferred Stock.

(xi) **"Securities Conversion Amount"** means the product of (A) the percentage of the consideration in the Put Triggering Event (in relation to all consideration being paid in such Put Triggering Event) being paid in securities (other than in Eligible Successor Common Stock) multiplied by (B) the Conversion Amount as to which a Put Triggering Event Redemption Notice is being delivered.

(xii) **"Successor Entity"** means the Person, which may be the Corporation, formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been made, provided that if such Person is not a publicly traded entity whose common stock or equivalent equity security is quoted or listed for trading on an Eligible Market, Successor Entity shall mean such Person's Parent Entity.

(xiii) **"Successor Entity Conversion Amount"** means the product of (A) the percentage of the consideration in the Put Triggering Event (in relation to all consideration being paid in such Put Triggering Event) being paid in Eligible Successor Common Stock multiplied by (B) the Conversion Amount as to which a Put Triggering Event Redemption Notice is being delivered.

(xiv) **"Trading Day"** means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that "Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

(xv) **"Voting Stock"** means capital stock of the class or classes pursuant to which the holders thereof have the general voting power to elect or the general power to appoint, at least a majority of the board of directors, managers or trustees thereof (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(b) Assumption. The Corporation shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Corporation under this Certificate of Designations in accordance with the provisions of this Section 5 pursuant to written agreements in form and substance satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each Holder of Series A Preferred Stock in exchange for such Series A Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designations including, without limitation, having a stated value equal to the Stated Value of the Series A Preferred Stock held by such Holder and having similar ranking to the Series A Preferred Stock, and satisfactory to the Required Holders and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designations referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designations with the same effect as if such Successor Entity had been named as the Corporation herein. Upon consummation of the Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion of the Series A Preferred Stock at any time after the consummation of the Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the conversion of the Series A Preferred Stock prior to such Fundamental Transaction (without regard to any limitations on the conversion of the Series A Preferred Stock), such shares of publicly traded common stock (or their equivalent) of the Successor Entity, as adjusted in accordance with the provisions of this Certificate of Designations, which the Holder would have been entitled to receive had such Holder converted the Series A Preferred Stock in full (without regard to any limitations on conversion, including without limitation, the Maximum Percentage) immediately prior to such Fundamental Transaction (provided, however, to the extent that a Holder's right to receive any such shares of publicly traded common stock (or their equivalent) of the Successor Entity would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to receive such shares to such extent (or to beneficially own any shares of publicly traded common stock (or their equivalent) of the Successor Entity as a result of such consideration to such extent) and the portion of such shares shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage, at which time such Holder shall be delivered such shares to the extent as if there had been no such limitation). The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of the Series A Preferred Stock.

(c) Put Triggering Event. No sooner than fifteen (15) days nor later than ten (10) days prior to the consummation of a Change of Control, but not prior to the public announcement of such Change of Control, the Corporation shall deliver written notice thereof via facsimile and overnight courier to the Holders (a **"Change of Control Notice").** At any time during the period beginning after a Holder's receipt of a Change of Control Notice with respect to a Put Triggering Event and ending on the date that is twenty (20) Trading Days after such Put Triggering Event, such Holder may require the Corporation to redeem all or any portion of such Holder's Series A Preferred Stock by delivering (such date of delivery, the **"Put Triggering Event Redemption Notice Date")** written notice thereof **("Put Triggering Event Redemption Notice")** to the Corporation, which Put Triggering Event Redemption Notice shall indicate the Conversion Amount the Holder is electing to be redeemed and/or assumed as provided below. Any Series A Preferred Stock subject to redemption pursuant to this Section 5(c) shall be redeemed by the Corporation in cash at a price equal to (I) in the event of a Put Triggering Event that provides for cash payments to the Corporation or the equity holders of the Corporation, the greater of (i) 100% of the Cash Conversion Amount and (ii) the product of (x) the Conversion Rate in effect at such time as the Holder delivers a Put Triggering Event Redemption Notice with respect to such Cash Conversion Amount and (y) the highest amount of cash consideration to be paid to a holder of one share of Common Stock upon consummation of such Put Triggering Event (or, if such cash consideration is paid to the Corporation, that would be payable to a holder of one share of Common Stock after consummation of such Put Triggering Event and distribution of such cash by the Corporation to its holders of Common Stock), **(**II**)** in the event of a Put Triggering Event that provides for payments in securities (other than in Eligible Successor Common Stock) to the Corporation or the equity holders of the Corporation, the greater of (i) 100% of the Securities Conversion Amount and (ii) the product of (x) the Conversion Rate in effect at such time as the Holder delivers a Put Triggering Event Redemption Notice with respect to such Securities Conversion Amount and (y) the last Closing Sale Price of the Common Stock in effect immediately prior to the consummation of the Put Triggering Event (the **"Put Triggering Event Redemption Price"),** and **(**III**)** in the event of a Triggering Event that provides for payments in Eligible Successor Common Stock to the Corporation or the equity holders of the Corporation, the Successor Entity shall assume the Successor Entity Conversion Amount in accordance with the provisions of Section 5(b) above. Upon the Corporation's receipt of a Put Triggering Event Redemption Notice(s) from any Holder, the Corporation shall within one (1) Business Day of such receipt notify each other Holder by facsimile of the Corporation's receipt of such notice(s). The Corporation shall make payment of the Put Triggering Event Redemption Price concurrently with the consummation of such Put Triggering Event to all Holders that deliver a Put Triggering Event Redemption Notice prior to the consummation of such Put Triggering Event and within five (5) Trading Days after the Corporation's receipt of such notice otherwise (the **"Put Triggering Event Redemption Date").** To the extent redemptions required by this Section 5(c) are deemed or determined by a court of competent jurisdiction to be prepayments of the Series A Preferred Stock by the Corporation, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5(c), until the Put Triggering Event Redemption Price (together with any interest thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(c) may be converted, in whole or in part, by the Holder into shares of Common Stock, or in the event the Conversion Date is after the consummation of the Put Triggering Event, shares or equity interests of the Successor Entity substantially equivalent to the Corporation's Common Stock pursuant to Section 7(c)(i). The Holders and the Corporation agree that in the event of the Corporation's redemption of any Series A Preferred Stock under this Section 5(c), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future dividend rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 5(c) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. In the event that the Corporation does not pay the Put Triggering Event Redemption Price on the Put Triggering Event Redemption Date, then the Holder shall have the right to void the redemption pursuant to Section 5(d).

(d) Void Redemption. In the event that the Corporation does not pay a Put Triggering Event Redemption Price within the time period set forth in this Certificate of Designations, at any time thereafter and until the Corporation pays such unpaid applicable Put Triggering Event Redemption Price in full, a Holder shall have the option to, in lieu of redemption, require the Corporation to promptly return to such Holder any or all of the Series A Preferred Stock that were submitted for redemption by such Holder and for which the applicable Put Triggering Event Redemption Price has not been paid, by sending written notice thereof to the Corporation via facsimile (the **"Void Redemption Notice").** Upon the Corporation's receipt of such Void Redemption Notice, (i) the applicable Redemption Notice shall be null and void with respect to the Series A Preferred Stock subject to the Void Redemption Notice, (ii) the Corporation shall immediately return any Series A Preferred Stock subject to the Void Redemption Notice, and (iii) the Conversion Price of such returned Series A Preferred Stock shall be adjusted to the lesser of (A) the Conversion Price as in effect on the date on which the Void Redemption Notice is delivered to the Corporation and (B) the lowest Weighted Average Price of the Common Stock during the period beginning on the date on which the applicable Redemption Notice is delivered to the Corporation and ending on the date on which the Void Redemption Notice is delivered to the Corporation, as applicable, subject to further adjustment as provided in this Certificate of Designations.

(e) Disputes. In the event of a dispute as to the determination of the arithmetic calculation of the Put Triggering Event Redemption Price, such dispute shall be resolved pursuant to Section 7(e) with the term '' Put Triggering Event Redemption Price " being substituted for the term "Conversion Rate". A Holder's delivery of a Void Redemption Notice and exercise of its rights following such notice shall not effect the Corporation's obligations to make any payments which have accrued prior to the date of such notice.

6. Voting Rights.

(a) Certain definitions. For purposes of this Certificate of Designations, the following definitions shall apply:

(i) **"Contingent Obligation"** means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(ii) **"GAAP"** means United States generally accepted accounting principles, consistently applied.

(iii) **"Indebtedness"** of any Person means, without duplication (i) all indebtedness for borrowed money, (ii) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, including (without limitation) "capital leases" in accordance with GAAP (other than trade payables entered into in the ordinary course of business), (iii) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (iv) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (v) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (vi) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (vii) all indebtedness referred to in clauses (i) through (vi) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (viii) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above.

(iv) **"Person"** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(b) General. The Holders shall not be entitled to vote, except (i) as otherwise required by applicable law and (ii) subject to Section 7(i), that each issued and outstanding share of Series A Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each such share of Series A Preferred Stock is convertible (as adjusted from time to time pursuant to Section 8 hereof), at each meeting of stockholders of the Corporation (or pursuant to any action by written consent) with respect to matters presented to the stockholders of the Corporation for their action or consideration in connection with (A) a Change of Control of the Corporation or (B) the issuance by the Corporation, directly or indirectly, in one or more transactions or series of transactions, of shares of Common Stock, Options or Convertible Securities if, in the aggregate, the number of such shares of Common Stock together with the number of shares of Common Stock issuable upon the conversion or exercise, as applicable, of such Options and Convertible Securities is more than 20% of the number of shares of Common Stock issued and outstanding prior to any such issuance (such issuance, the **"Twenty Percent Issuance").**

(c) Series A Preferred Stock Protective Provisions. In addition to any other rights provided by law, the Corporation shall not and shall not permit any direct or indirect Subsidiary of the Corporation to, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series A Preferred Stock:

(i) increase the authorized number of shares of Series A Preferred Stock;

(ii) amend, alter or repeal the preferences, special rights or other powers of the Series A Preferred Stock so as to affect adversely the Series A Preferred Stock;

(iii) on or prior to the 18th month anniversary of the Initial Issuance Date, create, or authorize the creation of, or issue, or authorize the issuance of any debt security or any equity security or incur, or authorize the incurrence of any other Indebtedness, if such debt security, equity security or other Indebtedness is (A) one with preference or priority over the rights of the Series A Preferred Stock as to the right to either receive dividends or amounts distributable upon liquidation, dissolution or winding up of the Corporation and (B) issued or incurred with net proceeds to the Corporation or will have outstanding principal amount incurred plus accrued interest, as applicable, in an amount, individually or in the aggregate, more than $6,000,000 less the then outstanding principal amount of Vringo Notes (as defined in the Agreement and Plan of Merger, dated as of March 12, 2012 (the **"Subscription Date"),** by and among Vringo, Inc., a Delaware corporation **("Parent"),** VIP Merger Sub, Inc., a Delaware corporation and wholly owned Subsidiary of Parent, and the Corporation; provided, that the Corporation and its Subsidiaries shall be permitted to incur Indebtedness, provided, that the liens or other encumbrances, if any, on such Indebtedness cover only assets acquired after the Initial Issuance Date, and the holder of such Indebtedness expressly subordinates to the Holders of the Series A Preferred Stock with respect to assets owned by the Corporation on or prior to the Initial Issuance Date pursuant to a subordination agreement in form and substance reasonably satisfactory to the Required Holders; or

(iv) in any manner, issue or sell any rights, warrants or options to subscribe for or purchase shares of Common Stock or securities directly or indirectly, convertible into or exchangeable or exercisable for shares of Common Stock at a price which varies or may vary with the market price of the shares of Common Stock, including by way of one or more reset(s) to any fixed price, unless the conversion, exchange or exercise price of any such security cannot be less than the then applicable Conversion Price. Nothing herein shall prevent the Corporation from consummating an acquisition that does not result in capital raising for the Corporation and/or any of its Subsidiaries where the purchase price with respect thereto is a fixed price determined on or prior to the consummation of such transaction based on an average of recent market prices prior to such consummation, but only if all parties to any agreement with respect to such transaction and all Persons that are entitled to receive any securities pursuant to any such agreement are prohibited from selling, directly or indirectly, all equity and equity linked securities of the Corporation at all times after commencement of negotiations with respect to any such transaction until the consummation of any such transaction.

7. Conversion. Subject to Section 7(i), each share of Series A Preferred Stock may be converted into shares of Common Stock at any time or times, at the option of any Holder as provided in this Section 7, provided, however, that in connection with any Liquidation Event, the right of conversion shall terminate at the close of business on the full business day next preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Series A Preferred Stock.

(a) Certain definitions. For purposes of this Certificate of Designations, the following definitions shall apply:

(i) "**Bloomberg**" means Bloomberg Financial Markets.

(ii) "**Conversion Amount**" means the Stated Value.

(iii) "**Conversion Price**" means $.33138918, subject to adjustment as provided herein.

(iv) "**Subsidiary**" means, with respect to the Corporation, any entity in which the Corporation, directly or indirectly, owns any of the capital stock or holds an equity or similar interest.

(v) "**Weighted Average Price**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market during the period beginning at 9:30:01 a.m., New York City time, and ending at 4:00:00 p.m., New York City time, as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York City time, and ending at 4:00:00 p.m., New York City time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Weighted Average Price cannot be calculated for such security on such date on any of the foregoing bases, the Weighted Average Price of such security on such date shall be the fair market value as mutually determined by the Corporation and the Required Holders. If the Corporation and the Required Holders are unable to agree upon the fair market value of the Common Stock, then such dispute shall be resolved pursuant to Section 7(e) below with the term "Weighted Average Price" being substituted for the term "Conversion Rate." All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(b) Conversion. The number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock pursuant to this Section 7 shall be determined according to the following formula (the **"Conversion Rate"):**

$$\frac{\text{Conversion Amount}}{\text{Conversion Price}}$$

No fractional shares of Common Stock are to be issued upon the conversion of any Series A Preferred Stock, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number.

The applicable Conversion Rate and Conversion Price from time to time in effect is subject to adjustment as hereinafter provided.

(c) Mechanics of Conversion. The conversion of Series A Preferred Stock shall be conducted in the following manner:

(i) Holder's Delivery Requirements. To convert Series A Preferred Stock into shares of Common Stock on any date (a **"Conversion Date"),** the Holder shall (A) transmit by facsimile (or otherwise deliver), for receipt on or prior to 11:59 p.m., New York City time, on such date, a copy of a properly completed notice of conversion executed by the registered Holder of the Series A Preferred Stock subject to such conversion in the form attached hereto as Exhibit I (the **"Conversion Notice")** to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporations registered transfer agent (the **"Transfer Agent")** (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 7(c)(iv), surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates representing the Series A Preferred Stock being converted (or compliance with the procedures set forth in Section 11) (the **"Preferred Stock Certificates").**

(ii) Corporation's Response. Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within two (2) Trading Days, send, via facsimile, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the third (3^{rd}) Trading Day following the date of receipt by the Corporation of such Conversion Notice (the **"Share Delivery Date"),** (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series A Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion, as may be required pursuant to Section 7(c)(iv), is greater than the number of shares of Series A Preferred Stock being converted, then the Corporation shall, as soon as practicable and in no event later than five (5) Business Days after receipt of the Preferred Stock Certificate(s) (the **"Preferred Stock Delivery Date")** and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series A Preferred Stock not converted.

(iii) Corporation's Failure to Timely Convert.

(A) Cash Damages. If within three (3) Trading Days after the Corporation's receipt of the facsimile copy of a Conversion Notice the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series A Preferred Stock (a **"Conversion Failure"),** and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a **"Buy-In"),** then the Corporation shall, within three (3) Trading Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the **"Buy- In Price"),** at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Common Stock and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Sale Price on the Conversion Date. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Common Stock upon conversion of the Series A Preferred Stock as required pursuant to the terms hereof.

(B) Void Conversion Notice: Adjustment of Conversion Price. If for any reason a Holder has not received all of the shares of Common Stock to which such Holder is entitled prior to the tenth (10^{th}) Trading Day after the Share Delivery Date with respect to a conversion of Series A Preferred Stock, then the Holder, upon written notice to the Corporation, with a copy to the Transfer Agent, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, any shares of Series A Preferred Stock that have not been converted pursuant to such Holder's Conversion Notice; provided that the voiding of a Holder's Conversion Notice shall not effect the Corporation's obligations to make any payments which have accrued prior to the date of such notice pursuant to Section 7(c)(iii)(A) or otherwise.

(iv) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series A Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the certificate representing the Series A Preferred Stock to the Corporation unless (A) the full or remaining number of shares of Series A Preferred Stock represented by the certificate are being converted, in which case the Holder shall deliver such stock certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series A Preferred Stock upon physical surrender of any Series A Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series A Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series A Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series A Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Series A Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series A Preferred Stock unless such Holder first physically surrenders the certificate representing the Series A Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series A Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series A Preferred Stock, the number of shares of Series A Preferred Stock represented by such certificate may be less than the number of shares of Series A Preferred Stock stated on the face thereof. Each certificate for Series A Preferred Stock shall bear the following legend:

ANY TRANSFEREE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATIONS RELATING TO THE SERIES A PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 7(c)(iv) THEREOF. THE NUMBER OF SHARES OF SERIES A PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF SHARES OF SERIES A PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 7(c)(iv) OF THE CERTIFICATE OF DESIGNATIONS RELATING TO THE SERIES A PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE.

(d) Reservation of Shares.

(i) The Corporation shall have such number of its duly authorized and unissued shares of Common Stock for each Series A Preferred Stock equal to 130% of the number of shares of Common Stock necessary to effect the conversion at the Conversion Rate with respect to each such Series A Preferred Stock as of the Initial Issuance Date. The Corporation shall at all times when the Series A Preferred Stock shall be outstanding reserve and keep available out of its authorized but unissued stock, for the purposes of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized and unissued shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock (the **"Required Reserve Amount").** The initial number of shares of Common Stock reserved for conversions of the Series A Preferred Stock and each increase in the number of shares so reserved shall be allocated pro rata among the Holders based on the number of shares of Series A Preferred Stock held by each Holder at the time of issuance of the Series A Preferred Stock or increase in the number of reserved shares, as the case may be (the **"Authorized Share Allocation").** In the event a Holder shall sell or otherwise transfer any of such Holder's Series A Preferred Stock, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Series A Preferred Stock (other than pursuant to a transfer of Series A Preferred Stock in accordance with the immediately preceding sentence) shall be allocated to the remaining Holders of Series A Preferred Stock, pro rata based on the number of shares of Series A Preferred Stock then held by such Holders. Before taking any action that would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Corporation will take any corporate action that may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully-paid and nonassessable shares of such Common Stock at such adjusted conversion price.

(ii) If at any time while any of the Series A Preferred Stock remain outstanding the Corporation does not have a sufficient number of duly authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon conversion of the Series A Preferred Stock at least a number of shares of Common Stock equal to the Required Reserve Amount (an **"Authorized Share Failure"),** then the Corporation shall immediately take all action necessary to increase the Corporation's authorized shares of Common Stock to an amount sufficient to allow the Corporation to reserve the Required Reserve Amount for the Series A Preferred Stock then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Corporation shall hold a meeting of its stockholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Corporation shall provide each stockholder with a proxy statement and shall use its best efforts to solicit its stockholders' approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the stockholders that they approve such proposal.

(e) Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via facsimile within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via facsimile the disputed arithmetic calculation of the Conversion Rate to any ''big four" international accounting firm. The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

(f) Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series A Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(g) Effect of Conversion. All shares of Series A Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor and payment of any accrued but unpaid dividends thereon (whether or not declared). Subject to Section 7(c)(iii)(B), any shares of Series A Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series A Preferred Stock accordingly.

(h) Transfer Taxes. The issuance of certificates for shares of the Common Stock on conversion of this Series A Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series A Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

(i) Maximum Percentage. Notwithstanding anything to the contrary set forth herein, the Corporation shall not effect any conversion of Series A Preferred Stock, and no Holder shall have the right to convert any Series A Preferred Stock, to the extent that after giving effect to such conversion, the beneficial owner of such shares (together with such Person's affiliates) would have acquired, through conversion of Series A Preferred Stock or otherwise, beneficial ownership of a number of shares of Common Stock that exceeds 9.99% (the "**Maximum Percentage**") of the number of shares of Common Stock outstanding immediately after giving effect to such conversion. The Corporation shall not give effect to any voting rights of the Series A Preferred Stock, and any Holder shall not have the right to exercise voting rights with respect to any Series A Preferred Stock pursuant hereto, to the extent that giving effect to such voting rights would result in such Holder (together with its affiliates) being deemed to beneficially own in excess of the Maximum Percentage of the number of shares of Common Stock outstanding immediately after giving effect to such exercise, assuming such exercise as being equivalent to conversion. For purposes of the foregoing, the number of shares of Common Stock beneficially owned by a Person and its affiliates shall include the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock with respect to which the determination of such sentence is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted shares of Series A Preferred Stock beneficially owned by such Person or any of its affiliates and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation (including, without limitation, any notes or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 7(i) beneficially owned by such Person or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this Section 7(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended. For purposes of this Section 7(i), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Corporation's most recent Form 10-K, Form 10-Q, or Form 8-K, as the case may be, (2) a more recent public announcement by the Corporation, or (3) any other notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written request of any Holder, the Corporation shall within one (1) Business Day following the receipt of such notice, confirm orally and in writing to any such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Series A Preferred Stock, by such Holder and its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. By written notice to the Corporation, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% specified in such notice; provided, that (i) any such increase will not be effective until the sixty-first (61st) day after such notice is delivered to the Corporation, and (ii) any such increase or decrease will apply only to the Holder providing such written notice and not to any other Holder. In the event that the Corporation cannot pay any portion of any dividend, distribution, grant or issuance hereunder (including pursuant to Sections 3, 5(b) or 8(f)) to a Holder solely by reason of this Section 7(i) (such shares, the **"Limited Shares"),** notwithstanding anything to the contrary contained herein, the Corporation shall not be required to pay cash in lieu of the payment that otherwise would have been made in such Limited Shares, but shall hold any such Limited Shares in abeyance for such Holder until such time, if ever, that the delivery of such Limited Shares shall not cause the Holder to exceed the Maximum Percentage, at which time such Holder shall be delivered such Limited Shares to the extent as if there had been no such limitation. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 7(i) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation.

8. Anti-Dilution Provisions. The Conversion Price shall be subject to adjustment from time to time in accordance with this Section 8.

(a) Certain Definitions. For purposes of this Certificate of Designations, the following definitions shall apply:

(i) **"Closing Sale Price"** means, for any security as of any date, the last closing trade price for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price then the last trade price of such security prior to 4:00:00 p.m., New York City time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or, if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the ask prices of any market makers for such security as reported in the "pink sheets" by Pink Sheets LLC (formerly the National Quotation Bureau, Inc.). If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Corporation and the Required Holders. If the Corporation and the Required Holders are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 7(e). All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

(ii) **"Convertible Securities"** means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable or exercisable for Common Stock.

(iii) **"Excluded Securities"** means any capital stock issued or issuable: (i) upon conversion of the Series A Preferred Stock; (ii) as a dividend or distribution on the Series A Preferred Stock; (iii) upon conversion of any Options or Convertible Securities which are outstanding on the day immediately preceding the Subscription Date, provided that the terms of such Options or Convertible Securities are not amended, modified or changed on or after the Subscription Date; (iv) pursuant to any benefit plan, program or agreement approved by the Corporation's board of directors or any committee thereof pursuant to which the Corporation's securities may be issued to any employee, officer or director for bona fide services provided to the Corporation; and (v) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Corporation, provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Corporation and shall provide to Corporation additional benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities for the purpose of raising capital or to an entity whose primary business is investing in securities.

(iv) **"Options"** means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(v) **"Option Value"** means the value of an Option based on the Black and Scholes Option Pricing model obtained from the "OV" function on Bloomberg determined (1) in the event the issuance of such Option is publicly announced, the day prior to the public announcement of the applicable Option for pricing purposes or (2) in the event the issuance of such Option is not publicly announced, the day of issuance of such Option, and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of the applicable Option as of the applicable date of determination, (ii) an expected volatility equal to the lesser of 50% and the 100 day volatility obtained from the HVT function on Bloomberg as of the day immediately following the public announcement of the applicable Option, (iii) the underlying price per share used in such calculation shall be the highest Weighted Average Price during the period beginning on the day prior to the execution of definitive documentation relating to the issuance of the applicable Option and the public announcement of such issuance, (iv) a zero cost of borrow, and (v) a 250 day annualization factor.

(vi) **"Principal Market"** means the Eligible Market that is the principal securities exchange market for the Common Stock.

(b) Adjustment of Series A Conversion Price Upon Issuance of Additional Shares of Common Stock. If and whenever after the Subscription Date the Corporation issues or sells, or in accordance with this Section 8(b) is deemed to have issued or sold, any Common Stock (including the issuance or sale of Common Stock owned or held by or for the account of the Corporation but excluding Excluded Securities) for a consideration per share (the **"New Issuance Price")** less than a price (the **"Applicable Price")** equal to the Conversion Price in effect immediately prior to such issue or sale or deemed issuance or sale (the foregoing, a **"Dilutive Issuance"),** then immediately after such Dilutive Issuance, the Conversion Price then in effect shall be reduced to an amount equal to the New Issuance Price. Notwithstanding anything to the contrary contained herein, from and after the date on which an aggregate of at least 100,000,000 shares of Common Stock have been traded on an Eligible Market from and after the Initial Issuance Date at a per share price above $3.00 (as adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period), the provisions of this Section 8(b) shall no longer be applicable. For purposes of determining the adjusted Conversion Price under this Section 8(b), the following shall be applicable:

(i) Issuance of Options. If the Corporation in any manner grants or sells any Options and the lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange or exercise of any Convertible Securities issuable upon exercise of such Option is less than the Applicable Price, then each such share of Common Stock underlying such Option shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the granting or sale of such Option for such price per share. For purposes of this Section 8(b)(i), the "lowest price per share for which one share of Common Stock is issuable upon the exercise of any such Option or upon conversion or exchange or exercise of any Convertible Securities issuable upon exercise of such Option" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon granting or sale of the Option, upon exercise of the Option and upon conversion or exchange or exercise of any Convertible Security issuable upon exercise of such Option less any consideration paid or payable by the Corporation with respect to such one Ordinary Share upon the granting or sale of such Option, upon exercise of such Option and upon conversion exercise or exchange of any Convertible Security issuable upon exercise of such Option. No further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock or of such Convertible Securities upon the exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange or exercise of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Securities and the lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange or exercise thereof is less than the Applicable Price, then each such share of Common Stock underlying such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this Section 8(b)(ii), the "lowest price per share for which one share of Common Stock is issuable upon such conversion or exchange or exercise" shall be equal to the sum of the lowest amounts of consideration (if any) received or receivable by the Corporation with respect to any one share of Common Stock upon the issuance or sale of the Convertible Security and upon the conversion or exchange or exercise of such Convertible Security less any consideration paid or payable by the Corporation with respect to such one Ordinary Share upon the issuance or sale of such Convertible Security and upon conversion, exercise or exchange of such Convertible Security. No further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock upon conversion or exchange or exercise of such Convertible Securities, and if any such issue or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price had been or are to be made pursuant to other provisions of this Section 8(b), no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(iii) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exchange or exercise of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable or exercisable for Common Stock changes at any time, the Conversion Price in effect at the time of such change shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such changed purchase price, additional consideration or changed conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 8(b)(iii), if the terms of any Option or Convertible Security that was outstanding as of the Subscription Date are changed in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such change. No adjustment shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(iv) Calculation of Consideration Received. In case any Option is issued in connection with the issue or sale of other securities of the Corporation, together comprising one integrated transaction (x) the Options will be deemed to have been issued for the Option Value of such Options and (y) the other securities issued or sold in such integrated transaction shall be deemed to have been issued for the difference of (x) the aggregate consideration received by the Corporation less any consideration paid or payable by the Corporation pursuant to the terms of such other securities of the Corporation, less (y) the Option Value of such Options. If any Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation will be the fair value of such consideration, except where such consideration consists of marketable securities, in which case the amount of consideration received by the Corporation will be the Closing Sale Price of such marketable securities on the date of receipt of such securities. If any Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock, Options or Convertible Securities, as the case may be. The fair value of any consideration other than cash or marketable securities will be determined jointly by the Corporation and the Required Holders. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the **"Valuation Event"),** the fair value of such consideration will be determined within five (5) Business Days after the tenth (10^{th}) day following the Valuation Event by an independent, reputable appraiser jointly selected by the Corporation and the Required Holders. The determination of such appraiser shall be deemed binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Corporation.

(c) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

(d) Other Events. If any event occurs of the type contemplated by the provisions of this Section 8 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features, other than the issuance of Excluded Securities), then the Corporation's Board of Directors will make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series A Preferred Stock; provided that no such adjustment will increase the Conversion Price as otherwise determined pursuant to this Section 8.

(e) Voluntary Adjustment By Corporation. The Corporation may at any time reduce the then current Conversion Price to any amount and for any period of time deemed appropriate and approved by the Board of Directors in accordance with Delaware law.

(f) Purchase Rights. If at any time the Corporation grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the **"Purchase Rights"),** then the Holders will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of the Series A Preferred Stock (without taking into account any limitations or restrictions on the convertibility of the Series A Preferred Stock) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that a Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage, at which time the Holder shall be granted such right to the same extent as if there had been no such limitation).

(g) Notices.

(i) Immediately upon any adjustment of the Conversion Rate and Conversion Price pursuant to Section 8 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 7(e).

(ii) Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (I) with respect to any dividend or distribution upon the Common Stock, (II) with respect to any pro rata subscription offer to holders of Common Stock or (III) for determining rights to vote with respect to any Change of Control, any Twenty Percent Issuance, any Fundamental Transaction or any Liquidation Event.

(iii) The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which any Change of Control, any Twenty Percent Issuance, any Fundamental Transaction or any Liquidation Event will take place.

9. Suspension from Trading. If on any day after the Initial Issuance Date, the sale of any of the shares of Common Stock issued or issuable upon the conversion of any shares of Series A Preferred Stock (the **"Conversion Shares")** (without giving effect to the Maximum Percentage) issuable hereunder cannot be made (i) because of the suspension of trading by the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded (a **"Maintenance Failure"),** then, as partial relief for the damages to any Holder by reason of any such delay in or reduction of its ability to sell the Conversion Shares (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance), the Corporation shall pay to each Holder, for each full fifteen (15) day period during which there is a Maintenance Failure, an amount in cash equal to one quarter of one percent (0.25%) of the product of (I) the total number of Conversion Shares issuable hereunder (without giving effect to the Maximum Percentage) and (II) the highest Closing Sale Price of the Common Stock during the period beginning on the Trading Date immediately prior to the first date of the Maintenance Failure and ending on the date such Maintenance Failure is cured or (ii) because of a failure to maintain the listing of the Common Stock on one or more Eligible Markets (a **"Delisting Maintenance Failure"),** then, as partial relief for the damages to any Holder by reason of any such delay in or reduction of its ability to sell the Conversion Shares (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance), the Corporation shall pay to each Holder, for each full fifteen (15) day period during which there is a Delisting Maintenance Failure, an amount in cash equal to one quarter of one percent (0.25%) of the Conversion Amount then held by such Holder. The payments to which a Holder shall be entitled pursuant to this Section 9 are referred to herein as **"Suspension Payments".** Suspension Payments shall be paid on the third Business Day after each full fifteen (15) day period during which there is a Maintenance Failure or a Delisting Maintenance Failure, as applicable.

10. Status of Converted Stock, In the event any shares of Series A Preferred Stock shall be converted pursuant to Section 7 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

11. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series A Preferred Stock Certificates representing the Series A Preferred Stock, and, in the case of loss, theft or destruction, of an indemnification undertaking by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series A Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series A Preferred Stock into Common Stock.

12. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series A Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designations. The Corporation covenants to each holder of Series A Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series A Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series A Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series A Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

13. Notice. Whenever notice or other communication is required to be given under this Certificate of Designations, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series A Preferred Stock maintained by the Corporation as set forth in Section 16.

14. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series A Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

15. Transfer of Series A Preferred Stock. A Holder may assign some or all of the Series A Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

16. Series A Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series A Preferred Stock, in which the Corporation shall record the name and address of the persons in whose name the Series A Preferred Stock have been issued, as well as the name and address of each transferee. The Corporation may treat the person in whose name any Series A Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

17. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, this Certificate of Designations or otherwise with respect to the issuance of the Series A Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting,

18. General Provisions. In addition to the above provisions with respect to Series A Preferred Stock, such Series A Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Certificate of Incorporation of the Corporation with respect to preferred stock of the Corporation generally.

19. Disclosure. Upon receipt or delivery by the Corporation of any notice in accordance with the terms of this Certificate of Designations, unless the Corporation has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or any of its Subsidiaries, the Corporation shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Corporation believes that a notice contains material, nonpublic information relating to the Corporation or its Subsidiaries, the Corporation so shall indicate to the Holders contemporaneously with delivery of such notice, and in the absence of any such indication, the Holders shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or its Subsidiaries.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Designation on the 19th day of July 2012, and affirms the statements contained therein as true under the penalties of perjury.

VRINGO, INC.

By: /s/ Andrew D. Perlman
Name: Andrew D. Perlman
Its: Chief Executive Officer

EXHIBIT I

VRINGO, INC.

Reference is made to the Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock of Vringo, Inc. (the **"Certificate of Designations"**). In accordance with and pursuant to the Certificate of Designations, the undersigned hereby elects to convert the number of shares of Series A Convertible Preferred Stock, par value $0.01 per share (the **"Series A Preferred Stock"**), of Vringo, Inc., a Delaware corporation (the **"Corporation"**), indicated below into shares of Common Stock, par value $0.01 per share (the **"Common Stock"**), of the Corporation, as of the date specified below. The undersigned represents and warrants that such conversion is not prohibited by Section 7(i) of the Certificate of Designations.

Date of Conversion: _____

Number of shares of Series A Preferred Stock to be converted: _____

Stock certificate no(s). of Series A Preferred Stock to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series A Preferred Stock are being converted in the following name and to the following address:

Issue to: _____

_____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Authorization: _____

By: _____
Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

ACKNOWLEDGMENT

The Corporation hereby acknowledges this Conversion Notice and hereby directs American Stock Transfer & Trust Company, LLC to issue the above indicated number of shares of Common Stock.

VRINGO, INC.

By: _____

Name: _____
Title: _____

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:41 PM 06/21/2013
FILED 01:41 PM 06/21/2013
SRV 130808120 - 4090975 FILE

STATE OF DELAWARE
CERTIFICATE OF CHANGE
OF REGISTERED AGENT AND/OR
REGISTERED OFFICE

The Board of Directors of Vringo, Inc., a Corporation of Delaware, on June 21, 2013 do hereby resolve and order that the location of the Registered Office of this Corporation within this State be, and the same hereby is, 1811 Silverside Road, in the City of Wilmington, County of New Castle, Zip Code 19810.

The name of the Registered Agent therein and in charge thereof upon whom process against this Corporation may be served is Vcorp Services, LLC.

Vringo, Inc., a Corporation of Delaware, does hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Directors at a meeting held as herein stated.

IN WITNESS WHEREOF, said Corporation has caused this certificate to be signed by an authorized officer on June 21, 2013

/s/ Alexander R. Berger
Alexander R. Berger,
Authorized Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:32 PM 10/15/2015
FILED 03:32 PM 10/15/2015
SR 20150522391 - File Number 4090975

VRINGO, INC,

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES B CONVERTIBLE PREFERRED STOCK**

WHEREAS, the Amended and Restated Certificate of Incorporation of Vringo, Inc., a Delaware corporation (the "Corporation") provides for a class of its authorized stock known, as preferred stock, comprised of 5,000,000 shares, issuable from, time to time in one or more series;

WHEREAS, the Board of Directors of the Corporation is authorized to fix the dividend rights, voting rights, conversion, rights, redemption privileges and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any Series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors of the Corporation, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of ONE MILLION SIX HUNDRED NINE THOUSAND ONE HUNDRED SIXTY SEVEN (1,609,167) shares of the preferred stock which the Corporation has the authority to issue, classified as Series B Convertible Preferred Stock, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Corporation does hereby provide for the issuance of a series of preferred stock for cash or exchange of other securities, rights, or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series B Convertible Preferred Stock". The initial number of authorized shares of the Series B Convertible Preferred Stock shall be ONE MILLION SIX HUNDRED NINE THOUSAND ONE HUNDRED SIXTY SEVEN (1,609,167), which shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series B Convertible Preferred Stock. Each share of the Series B Convertible Preferred Stock shall have a par value of $0.01.

2. Dividends. From and after the first date of issuance of any shares of Series B Convertible Preferred Stock (the **"Initial Issuance Date"**), the holders of Series B Convertible Preferred Stock (each, a **"Holder"** and collectively, the **"Holders")** shall be entitled to receive such dividends paid and distributions made to the holders of common stock, par value $0.01 per share (the "**Common Stock**"), pro rata to the holders of Common Stock to the same extent as if such Holders had converted the Series B Convertible Preferred Stock into Common Stock (without regard to any limitations on conversion herein or elsewhere) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

3. Liquidation Preference. Upon any Liquidation Event (as defined below), after provision for payment of all debts and liabilities of the Corporation, any remaining assets of the Corporation shall be distributed pro rata to the holders of Common Stock and the holders of Series B Convertible Preferred Stock as if the Series B Convertible Preferred Stock had been converted into shares of Common Stock pursuant to the provisions of Section 6 hereof immediately prior to such distribution. For purposes of this Certificate of Designation, a **"Liquidation Event"** means the voluntary or involuntary liquidation, dissolution or winding up of the Corporation or its subsidiaries or the sale of assets of which constitute all or substantially all of the assets of the business of the Corporation and its Subsidiaries taken as a whole, in a single transaction or series of transactions.

4. Fundamental Transactions.

(a) Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

(i) **"Business Day"** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(ii) **"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

(iii) **"Eligible Market"** means the New York Stock Exchange, Inc., the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, the NASDAQ Capital Market and the Over-the-Counter Bulletin Board.

(iv) **"Fundamental Transaction"** means that the Corporation shall (or in the case of clause (F) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the Exchange Act)), directly or indirectly, in one or more related transactions, (A) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another entity, or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation to another entity, or (C) allow another entity or entities to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other entity or other entities making or party to, or associated or affiliated with the other entities making or party to, such stock purchase agreement or other business combination), or (E) reorganize, recapitalize or reclassify its Common Stock, or (F) become the ''beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock.

(v) **"Parent Entity"** of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(vi) **"Person"** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

(vii) **"Required Holders"** means the holders of record of a majority of the then outstanding shares of Series B Convertible Preferred Stock.

(viii) **"Stated Value"** shall mean $6.00 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series B Convertible Preferred Stock after the Initial issuance Date.

(ix) **"Successor Entity"** means the Person, which may be the Corporation, formed by, resulting from or surviving any Fundamental Transaction or the Person with which such Fundamental Transaction shall have been made, provided that if such Person is not a publicly traded entity whose common stock or equivalent equity security is quoted or listed for trading on an Eligible Market, Successor Entity shall mean such Person's Parent Entity.

(x) **"Trading Day"** means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that "Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

(xi) **"Voting Stock"** means capital stock of the class or classes pursuant to which the holders thereof have the general voting power to elect or the general power to appoint, at least a majority of the board of directors, managers or trustees thereof (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(b) Assumption. The Corporation shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Corporation under this Certificate of Designation in accordance with the provisions of this Section 4 pursuant to written agreements in form and substance reasonably satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each Holder of Series B Convertible Preferred Stock in exchange for such Series B Convertible Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designation including, without limitation, having a stated value equal to the Stated Value of the Series B Convertible Preferred Stock held by such Holder and having similar ranking to the Series B Convertible Preferred Stock, and satisfactory to the Required Holders and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation with the same effect as if such Successor Entity had been named as the Corporation herein. Upon consummation of the Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion of the Series B Convertible Preferred Stock at any time after the consummation of the Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property) issuable upon the conversion of the Series B Convertible Preferred Stock prior to such Fundamental Transaction (without regard to any limitations on the conversion of the Series B Convertible Preferred Stock), such shares of publicly traded common stock (or their equivalent) of the Successor Entity, as adjusted in accordance with the provisions of this Certificate of Designation, which the Holder would have been entitled to receive had such Holder converted the Series B Convertible Preferred Stock in full (without regard to any limitations on conversion) immediately prior to such Fundamental Transaction. The provisions of this Section shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of the Series B Convertible Preferred Stock.

5. Voting Rights.

(a) General. Each issued and outstanding share of share of Series B Convertible Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which each such share of Series B Convertible Preferred Stock is convertible (as adjusted from time to time pursuant to Section 4 hereof).

(b) Series B Convertible Preferred Stock Protective Provisions. In addition to any other rights provided by law, the Corporation shall not and shall not permit any direct or indirect Subsidiary (as defined below) of the Corporation to, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series B Convertible Preferred Stock:

(i) increase the authorized number of shares of Series B Convertible Preferred Stock; or

(ii) amend, alter or repeal the preferences, special rights or other powers of the Series B Convertible Preferred Stock so as to affect adversely the Series B Convertible Preferred Stock.

6. Conversion. Each share of Series B Convertible Preferred Stock shall automatically be converted into shares of Common Stock immediately upon (i) the Corporation's authorized shares of Common Stock being increased to an amount sufficient to allow the Corporation to convert all shares of Series B Convertible Preferred Stock then outstanding into shares of Common Stock or (ii) the number of issued and outstanding shares of Common Stock and shares reserved for issuance being reduced to an amount sufficient to allow the Corporation to convert all shares of Series B Convertible Preferred Stock then outstanding into shares of Common Stock (each, a **"Series B Automatic Conversion Event")**. If a Series B Automatic Conversion Event does not occur following the Corporation's Annual Meeting scheduled to be held on November 16, 2015 (as such date may be extended pursuant to any adjournments of such meeting), then each share of Series B Convertible Preferred Stock shall automatically be converted into shares of Common Stock, up to and to the extent that the Corporation has authorized shares that are not reserved for other issuances (the **"Partial Conversion Event")**. The number of shares to be converted pursuant to the Partial Conversion Event shall be allocated pro rata among the Holders based on the number of shares of Series B Convertible Preferred Stock held by each Holder at the time of the Partial Conversion Event. Upon the occurrence of a Series B Automatic Conversion Event or Partial Conversion Event, the applicable shares of Series B Preferred Stock shall be automatically converted into the number of shares of Common Stock into which such shares of Series B Convertible Preferred Stock are then convertible pursuant to this Section 6 without any further action by any holder of such shares and whether or not the certificate(s) representing such shares are surrendered to the Corporation or its transfer agent.

(a) Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

(i) **"Bloomberg"** means Bloomberg Financial Markets.

(ii) **"Conversion Amount"** means the Stated Value.

(iii) **"Conversion Price"** means $0.60, subject to adjustment as provided herein.

(iv) **"Subsidiary"** means, with respect to the Corporation, any entity in which the Corporation, directly or indirectly, owns any of the capital stock or holds an equity or similar interest.

(b) Conversion. The number of shares of Common Stock issuable upon conversion of each share of Series B Convertible Preferred Stock pursuant to this Section 6 shall be determined by multiplying each such share of Series B Convertible Preferred Stock by the fraction set forth below (the **"Conversion Rate"**):

Conversion Amount
Conversion Price

No fractional shares of Common Stock are to be issued upon the conversion of any Series B Convertible Preferred Stock, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number.

The applicable Conversion Rate and Conversion Price from time to time in effect is subject to adjustment as hereinafter provided.

(c) Mechanics of Conversion. The conversion of Series B Convertible Preferred Stock shall be conducted in the following manner:

(i) Upon the occurrence of a Series B Automatic Conversion Event or if a Partial Conversion Event is to occur and in any event within ten (10) days after receipt of notice, by mail, postage prepaid from the Corporation of the occurrence of such event, each holder of record of shares of Series B Convertible Preferred Stock being converted shall (A) transmit by facsimile (or otherwise deliver) a copy of a properly completed notice of conversion executed by the registered Holder of the Series B Convertible Preferred Stock subject to such conversion in the form attached hereto as Exhibit I (the **"Conversion Notice"**) to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporation's registered transfer agent (the **"Transfer Agent"**) (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 6(c)(iv), surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates representing the Series B Convertible Preferred Stock being converted (or compliance with the procedures set forth in Section 9) (the **"Preferred Stock Certificates"**).

(ii) Corporation's Response, Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within three (3) Trading Days, send, via facsimile, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the third (3^{rd}) Trading Day following the date of receipt by the Corporation of such Conversion Notice (the **"Share Delivery Date")**, (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series B Convertible Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion pursuant to a Partial Conversion Event, as may be required pursuant to Section 6(c)(iv), is greater than the number of shares of Series B Convertible Preferred Stock being converted, then the Corporation shall or shall direct the Transfer Agent, as soon as practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) (the **"Preferred Stock Delivery Date")** and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series B Convertible Preferred Stock not converted or it shall direct the Transfer Agent to update the Holder's account to reflect the number of shares of Series B Convertible Preferred Stock not converted.

(iii) Corporation's Failure to Timely Convert.

(A) Cash Damages. If within three (3) Trading Days after the Corporation's receipt of the facsimile copy of a Conversion Notice the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series B Convertible Preferred Stock (a **"Conversion Failure"**), and if on or after such Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a **"Buy-In"**), then the Corporation shall, within three (3) Trading Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the **"Buy-In Price"**), at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Common Stock and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Sale Price on the Conversion Date. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Common Stock upon conversion of the Series B Convertible Preferred Stock as required pursuant to the terms hereof.

(iv) Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series B Convertible Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the Preferred Stock Certificate unless (A) the full or remaining number of shares of Series B Convertible Preferred Stock represented by the Preferred Stock Certificate are being converted, in which case the Holder shall deliver such Preferred Stock Certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series B Convertible Preferred Stock upon physical surrender of any Series B Convertible Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series B Convertible Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series B Convertible Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series B Convertible Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error, Notwithstanding the foregoing, if Series B Convertible Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series B Convertible Preferred Stock unless such Holder first physically surrenders the certificate representing the Series B Convertible Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series B Convertible Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series B Convertible Preferred Stock, the number of shares of Series B Convertible Preferred Stock represented by such certificate may be less than the number of shares of Series B Convertible Preferred Stock stated on the face thereof. Each certificate for Series B Convertible Preferred Stock shall bear the following legend:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES LAWS OF ANY U.S. STATE, NOR IS ANY SUCH REGISTRATION CONTEMPLATED. THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM.

(d) Reservation of Shares.

(i) The Corporation shall, upon the happening of the Series B Automatic Conversion Event, reserve and keep available out of its authorized but unissued stock, for the purposes of effecting the conversion of the Series B Convertible Preferred Stock, such number of its duly authorized and unissued shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series B Convertible Preferred Stock (the **"Required Reserve Amount"**). The initial number of shares of Common Stock reserved for conversions of the Series B Convertible Preferred Stock and each increase in the number of shares so reserved shall be allocated pro rata among the Holders based on the number of shares of Series B Convertible Preferred Stock held by each Holder at the time of issuance of the Series B Convertible Preferred Stock or increase in the number of reserved shares, as the case may be (the **"Authorized Share Allocation")**. In the event a Holder shall sell or otherwise transfer any of such Holder's Series B Convertible Preferred Stock, each transferee shall be allocated a pro rata portion of the number of reserved shares of Common Stock reserved for such transferor. Any shares of Common Stock reserved and allocated to any Person which ceases to hold any Series B Convertible Preferred Stock (other than pursuant to a transfer of Series B Convertible Preferred Stock in accordance with the immediately preceding sentence) shall be allocated to the remaining Holders of Series B Convertible Preferred Stock, pro rata based on the number of shares of Series B Convertible Preferred Stock then held by such Holders. Before taking any action that would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series B Convertible Preferred Stock, the Corporation will take any corporate action that may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully-paid and nonassessable shares of such Common Stock at such adjusted conversion price.

(e) Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via facsimile within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via facsimile the disputed arithmetic calculation of the Conversion Rate to any "big four" international accounting firm. The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

(f) Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series B Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(g) Effect of Conversion. All shares of Series B Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor and payment of any accrued but unpaid dividends thereon (whether or not declared). Subject to Section 6(c)(iii)(B), any shares of Series B Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series B Convertible Preferred Stock accordingly.

(h) Transfer Taxes. The issuance of certificates for shares of the Common Stock on conversion of this Series B Convertible Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series B Convertible Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

7. Anti-Dilution Provisions. The Conversion Price shall be subject to adjustment from time to time in accordance with this Section 7.

(a) Certain Definitions. For purposes of this Certificate of Designations, the following definitions shall apply:

(i) **"Convertible Securities"** means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable or exercisable for Common Stock.

(ii) **"Options"** means any rights, warrants or options to subscribe for or purchase Common Stock or Convertible Securities.

(iii) **"Principal Market"** means the Eligible Market that is the principal securities exchange market for the Common Stock.

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased.

(c) Notices.

(i) Immediately upon any adjustment of the Conversion Rate and Conversion Price pursuant to Section 7 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 6(e).

(ii) Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (I) with respect to any dividend or distribution upon the Common Stock, (II) with respect to any pro rata subscription offer to holders of Common Stock or (III) for determining rights to vote with respect to any Twenty Percent Issuance, any Fundamental Transaction or any Liquidation Event.

(iii) The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which any Twenty Percent Issuance, any Fundamental Transaction or any Liquidation Event will take place.

8. Status of Converted Stock. In the event any shares of Series B Convertible Preferred Stock shall be converted pursuant to Section 6 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

9. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series B Convertible Preferred Stock Certificates representing the Series B Convertible Preferred Stock, and, in the case of loss, theft or destruction, of an indemnification undertaking (with surety, if reasonably requested by the Corporation) by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series B Convertible Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series B Convertible Preferred Stock into Common Stock.

10. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series B Convertible Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designation. The Corporation covenants to each holder of Series B Convertible Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series B Convertible Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series B Convertible Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series B Convertible Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

11. Notice. Whenever notice or other communication is required to be given hereunder, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series B Convertible Preferred Stock maintained by the Corporation as set forth in Section 14.

12. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series B Convertible Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

13. Transfer of Series B Convertible Preferred Stock. A Holder may assign some or all of the Series B Convertible Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

14. Series B Convertible Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series B Convertible Preferred Stock, in which the Corporation shall record the name and address of the persons in whose name the Series B Convertible Preferred Stock have been issued, as well as the name and address of each transferee. The Corporation may treat the person in whose name any Series B Convertible Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

15. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the Delaware General Corporation Law (**"DGCL"**), this Certificate of Designation or otherwise with respect to the issuance of the Series B Convertible Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL and the applicable provisions hereof. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

16. General Provisions. In addition to the above provisions with respect to Series B Convertible Preferred Stock, such Series B Convertible Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Certificate of Incorporation of the Corporation with respect to preferred stock of the Corporation generally.

17. Disclosure. Upon receipt or delivery by the Corporation of any notice in accordance with the terms of this Certificate of Designation, unless the Corporation has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or any of its Subsidiaries, the Corporation shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, nonpublic information on a Current Report on Form 8-K or otherwise. In the event that the Corporation believes that a notice contains material, nonpublic information relating to the Corporation or its Subsidiaries, the Corporation so shall indicate to the Holders contemporaneously with delivery of such notice, and in the absence of any such indication, the Holders shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Corporation or its Subsidiaries.

[signature page follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed by the undersigned this 15th day of October, 2015.

VRINGO, INC.

By: /s/ Andrew D. Perlman
Name: Andrew D. Perlman
Title: Chief Executive Officer

EXHIBIT I

VRINGO, INC.

The undersigned hereby elects to convert the number of shares of Series B Convertible Preferred Stock, par value $0.01 per share (the **"Series B Convertible Preferred Stock"**), of Vringo, Inc., a Delaware corporation (the **"Corporation"**), indicated below into shares of Common Stock, par value $0.01 per share (the **"Common Stock"**), of the Corporation, as of the date specified below.

Date of Conversion: _____

Number of shares of Series B Convertible Preferred Stock to be converted: _____

Stock certificate no(s). of Series B Convertible Preferred Stock to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series B Convertible Preferred Stock are being converted in the following name and to the following address:

Issue to: _____

_____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Authorization: _____

By: _____
Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
VRINGO, INC.

VRINGO, INC., a Delaware corporation (the "Corporation"), does hereby certify that:

FIRST: The name of the Corporation is VRINGO, INC.

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 2006 and the Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 22, 2010, and as further amended by the Certificate of Amendment of the Amended and Restated Certificate of Incorporation on July 19, 2012.

THIRD: The Board of Directors of the Corporation (the "Board"), acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware (the "DGCL"), adopted resolutions amending the Corporation's Amended and Restated Certificate of Incorporation as follows:

Article Fourth of the Corporation's Amended and Restated Certificate of Incorporation is hereby amended by adding the following Sections (3), (4) and (5):

"(3) Reverse Stock Split. Upon the effectiveness of this Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Corporation, the shares of the Corporation's Common Stock issued and outstanding prior to the Effective Time and the shares of Common Stock issued and held in treasury of the Corporation immediately prior to the Effective Time shall automatically be reclassified into a smaller number of shares such that each ten (10) shares of the Corporation's issued and outstanding Common Stock immediately prior to the Effective Time are reclassified into one (1) validly issued, fully paid and nonassessable share of Common Stock, without any further action by the Corporation or the holder thereof. No fractional shares of Corporation Common Stock will be issued as a result of the reverse stock split. Instead, stockholders of record who otherwise would be entitled to receive fractional shares, will be entitled to rounding up of their fractional share to the nearest whole share.

(4) Each stock certificate that, immediately prior to the Effective Time, represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent that the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified (as well as the right to receive a whole share in lieu of a fractional share of Common Stock), provided, however, that each person of record holding a certificate that represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall receive, upon surrender of such certificate, a new certificate evidencing and representing the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified (including the right to receive a whole share in lieu of a fractional share of Common Stock).

(5) This Certificate of Amendment shall be effective on November 27, 2015 at 05:00 p.m., Eastern time (the **"Effective Time")."**

FOURTH: Thereafter, pursuant to a resolution of the Board, this Certificate of Amendment was submitted to the stockholders of the Corporation for their approval, and was duly adopted in accordance with the provisions of Sections 222 and 242 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this CERTIFICATE OF AMENDMENT to be signed by Anastasia Nyrkovskaya its Chief Financial Officer and Treasurer as of the 24th day of November, 2015.

VRINGO, INC.

By: /s/ Anastasia Nyrkovskaya
Name: Anastasia Nyrkovskaya
Title: Chief Financial Officer and Treasurer

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:43 PM 03/18/2016
FILED 04:43 PM 03/18/2016
SR 20161744697 - File Number 4090975

CERTIFICATE OF DESIGNATION

OF

SERIES C JUNIOR PARTICIPATING PREFERRED STOCK

OF

VRINGO, INC.

The undersigned do hereby certify that the following resolution was duly adopted by the Board of Directors of Vringo, Inc., a Delaware corporation (the "Company"), on March 18, 2016:

RESOLVED, that pursuant to the authority vested in the board of directors of the Company (the "Board of Directors") by the Company's Amended and Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), the Board of Directors does hereby create, authorize and provide for the issue of a series of Preferred Stock, par value $0.01 per share, of the Company, to be designated "Series C Junior Participating Preferred Stock", initially consisting of 300,000 shares, and to the extent that the designations, powers, preferences and relative and other special rights and the qualifications, limitations or restrictions of the Series C Junior Participating Preferred Stock are not stated and expressed in the Certificate of Incorporation, does hereby fix and herein state and express such designations, powers, preferences and relative and other special rights and the qualifications, limitations and restrictions thereof, as follows (all terms used herein which are defined in the Certificate of Incorporation shall be deemed to have the meanings provided therein):

SECTION 1. Designation and Amount. There shall be a series of Preferred Stock that shall be designated as "Series C Junior Participating Preferred Stock," and the number of shares constituting such series shall be 300,000. Such number of shares may be increased or decreased by resolution of the Board of Directors of the Company (the "Board"); provided, however, that no decrease shall reduce the number of shares of Series C Junior Participating Preferred Stock to less than the number of shares then issued and outstanding plus the number of shares issuable upon exercise of outstanding rights, options or warrants or upon conversion of outstanding securities issued by the Company.

SECTION 2. Dividends or Distributions. (a) Subject to the superior rights of the holders of shares of any other series of preferred stock of the Company or other class of capital stock of the Company ranking superior to the shares of Series C Junior Participating Preferred Stock with respect to dividends, the holders of shares of Series C Junior Participating Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of the assets of the Company legally available therefor, (1) quarterly dividends payable in cash on the last day of each fiscal quarter in each year, or such other dates as the Board shall approve (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or a fraction of a share of Series C Junior Participating Preferred Stock, in the amount of $10.00 per whole share (rounded to the nearest cent) less the amount of all cash dividends declared on the Series C Junior Participating Preferred Stock pursuant to the following clause (2) since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series C Junior Participating Preferred Stock (the total of which shall not, in any event, be less than zero) and (2) dividends payable in cash on the payment date for each cash dividend declared on the shares of Common Stock, par value $0.01 per share, of the Company (the "Common Stock") in an amount per whole share (rounded to the nearest cent) equal to the Formula Number (as hereinafter defined) then in effect times the cash dividends then to be paid on each share of Common Stock. In addition, if the Company shall pay any dividend or make any distribution on the Common Stock payable in assets, securities or other forms of noncash consideration (other than dividends or distributions solely in shares of Common Stock), then, in each such case, the Company shall simultaneously pay or make on each outstanding whole share of Series C Junior Participating Preferred Stock a dividend or distribution in like kind equal to the Formula Number then in effect times such dividend or distribution on each share of Common Stock. As used herein, the "Formula Number" shall be 1,000; provided, however, that, if at any time after March 18, 2016, the Company shall (i) declare or pay any dividend on the Common Stock payable in shares of Common Stock or make any distribution on the Common Stock in shares of Common Stock, (ii) subdivide (by a stock split or otherwise) the outstanding shares of Common Stock into a larger number of shares of Common Stock or (iii) combine (by a reverse stock split or otherwise) the outstanding shares of Common Stock into a smaller number of shares of Common Stock, then in each such event the Formula Number shall be adjusted to a number determined by multiplying the Formula Number in effect immediately prior to such event by a fraction, the numerator of which is the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that are outstanding immediately prior to such event (and rounding the result to the nearest whole number); and provided further that, if at any time after March 18, 2016, the Company shall issue any shares of its capital stock in a merger, reclassification, or change of the outstanding shares of Common Stock, then in each such event the Formula Number shall be appropriately adjusted to reflect such merger, reclassification or change so that each share of Series C Junior Participating Preferred Stock continues to be the economic equivalent of a Formula Number of shares of Common Stock prior to such merger, reclassification or change.

(b) The Company shall declare a cash dividend on the Series C Junior Participating Preferred Stock as provided in Section 2(a)(2) immediately prior to or at the same time it declares a cash dividend on the Common Stock; provided, however, that, in the event no cash dividend shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, during the period between the first issuance of any share or fraction of a share of Series C Junior Participating Preferred Stock, a dividend of $10.00 per whole share on the Series C Junior Participating Preferred Stock shall nevertheless accrue on such subsequent Quarterly Dividend Payment Date or the first Quarterly Dividend Payment Date, as the case may be. The Board may fix a record date for the determination of holders of shares of Series C Junior Participating Preferred Stock entitled to receive a dividend or distribution declared thereon, which record date shall be the same as the record date for any corresponding dividend or distribution on the Common Stock.

(c) Whether or not declared, dividends shall begin to accrue and be cumulative on outstanding shares of Series C Junior Participating Preferred Stock from and after the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue and be cumulative from and after the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series C Junior Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from and after such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series C Junior Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding.

(d) So long as any shares of Series C Junior Participating Preferred Stock are outstanding, no dividends or other distributions shall be declared, paid or distributed, or set aside for payment or distribution, on the Common Stock unless, in each case, the dividend required by this Section 2 to be declared on the Series C Junior Participating Preferred Stock shall have been declared and set aside.

(e) The holders of shares of Series C Junior Participating Preferred Stock shall not be entitled to receive any dividends or other distributions except as herein provided.

SECTION 3. Voting Rights. The holders of shares of Series C Junior Participating Preferred Stock, in addition to the voting rights provided by law, shall have the following voting rights:

(a) Each holder of Series C Junior Participating Preferred Stock shall be entitled to a number of votes on each matter on which holders of the Common Stock or stockholders generally are entitled to vote equal to the Formula Number then in effect, for each share of Series C Junior Participating Preferred Stock held of record, multiplied by the maximum number of votes per share which any holder of Common Stock or stockholders generally then have with respect to such matter (assuming, if applicable, any holding period or other requirement to exercise such maximum voting rights is satisfied).

(b) Except as otherwise herein provided or by applicable law, the holders of shares of Series C Junior Participating Preferred Stock and the holders of shares of Common Stock shall vote together as one class for the election of directors of the Company and on all other matters submitted to a vote of stockholders of the Company.

(c) Except as otherwise herein provided or by applicable law, holders of Series C Junior Participating Preferred Stock shall have no voting rights.

SECTION 4. Certain Restrictions. (a) Whenever quarterly dividends or other dividends or distributions on the Series C Junior Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series C Junior Participating Preferred Stock outstanding shall have been paid in full, the Company shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series C Junior Participating Preferred Stock:

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Junior Participating Preferred Stock, except dividends paid ratably on the Series C Junior Participating. Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Junior Participating Preferred Stock; provided, however, that the Company may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Company ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series C Junior Participating Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series C Junior Participating Preferred Stock, or any shares of stock ranking on a parity with the Series C Junior Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board) to all holders of such shares upon such terms as the Board, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company unless the Company could, under Section 4(a), purchase or otherwise acquire such shares at such time and in such manner.

SECTION 5. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, no distribution shall be made (1) to the holders of any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series C Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series C Junior Participating Preferred Stock shall have received an amount equal to the accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, plus an amount equal to the greater of (x) $1,000 per whole share or (y) an aggregate amount per share equal to the Formula Number then in effect times the aggregate amount to be distributed per share to holders of Common Stock or (2) to the holders of any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Junior Participating Preferred Stock, except distributions made ratably on the Series C Junior Participating Preferred Stock and all other such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up.

SECTION 6. Consolidation, Merger, etc. In case the Company shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash or any other property, then in any such case the then outstanding shares of Series C Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share equal to the Formula Number then in effect times the aggregate amount of stock, securities, cash or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is exchanged or changed. In the event both this Section 6 and Section 2 appear to apply to a transaction, this Section 6 will control.

SECTION 7. No Redemption; No Sinking Fund, (a) The shares of Series C Junior Participating Preferred Stock shall not be subject to redemption by the Company or at the option of any holder of Series C Junior Participating Preferred Stock; provided, however, that, subject to Section 4(a)(iv), the Company may purchase or otherwise acquire outstanding shares of Series C Junior Participating Preferred Stock in the open market or by offer to any holder or holders of shares of Series C Junior Participating Preferred Stock.

(b) The shares of Series C Junior Participating Preferred Stock shall not be subject to or entitled to the operation of a retirement or sinking fund.

SECTION 8. No Purchase Fund. The shares of Series C Junior Participating Preferred Stock shall not be subject to or entitled to the operation of a purchase fund.

SECTION 9. No Conversion; No Exchange. The shares of Series C Junior Participating Preferred Stock shall not be convertible into, or exchangeable for, shares of any other class or series.

SECTION 10. Ranking. The Series C Junior Participating Preferred Stock shall rank junior to all other series of preferred stock of the Company unless the Board shall specifically determine otherwise in fixing the powers, preferences and relative, participating, optional and other special rights of the shares of such series and the qualifications, limitations and restrictions thereof.

SECTION 11. Fractional Shares. The Series C Junior Participating Preferred Stock shall be issuable upon exercise of the Rights issued pursuant to the Rights Agreement in whole shares or in any fraction of a share that is one one-thousandth of a share (as such fraction may be adjusted as provided in the Rights Agreement) or any integral multiple of such fraction which shall entitle the holder, in proportion to such holder's fractional shares, to receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series C Junior Participating Preferred Stock. In lieu of any fractional shares, the Company may elect (a) to make a cash payment as provided in the Rights Agreement for fractions of a share, other than those one one-thousandths (1/1,000ths) of a Preferred Share (as such fraction may be adjusted as provided in the Rights Agreement), or any integral multiple thereof represented by one or more whole Rights immediately prior to such exercise, or (b) to issue depositary receipts evidencing fractional shares of Series C Junior Participating Preferred Stock pursuant to an appropriate agreement between the Company and a depository selected by the Company; provided, however, that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as holders of the Series C Junior Participating Preferred Stock.

SECTION 12. Reacquired Shares. Any shares of Series C Junior Participating Preferred Stock purchased or otherwise acquired by the Company in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancelation become authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board pursuant to the provisions of the Articles.

SECTION 13. Amendment. So long as any shares of Series C Junior Participating Preferred Stock shall be outstanding, (i) none of the voting power, the designations, the relative preferences, powers, participating, optional or other special rights and the qualifications, limitations and restrictions of the Series C Junior Participating Preferred Stock as herein provided shall be amended in any manner which would alter or change the powers, preferences, rights or privileges of the holders of Series C Junior Participating Preferred Stock so as to affect them adversely and (ii) no amendment, alteration or repeal of the Articles or of the Amended and Restated By-laws of the Company shall be effected so as to affect adversely any of such powers, preferences, rights or privileges.

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations to be signed by Andrew D. Perlman its Chief Executive Officer, as of the 18th day of March, 2016.

VRINGO, INC.

By: /s/ Andrew D. Perlman
Andrew D. Perlman
Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:00 PM 05/05/2016
FILED 01:00 PM 05/05/2016
SR 20162868079 - File Number 4090975

CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
VRINGO, INC.

VRINGO, INC., a Delaware corporation (the "Corporation"), does hereby certify that:

FIRST: The name of the Corporation is VRINGO, INC.

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 2006 and the Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 22, 2010, and as further amended by the Certificates of Amendment of the Amended and Restated Certificate of Incorporation on July 19, 2012 and on November 24, 2015.

THIRD: The Board of Directors of the Corporation (the "Board"), acting in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware (the "DGCL"), adopted resolutions amending the Corporation's Amended and Restated Certificate of Incorporation as follows:

Article First of the Corporation's Amended and Restated Certificate of Incorporation is hereby deleted in its entirety and replaced with the following:

"FIRST: The name of the Corporation (hereinafter the "Corporation") is FORM Holdings Corp."

FOURTH: This Certificate of Amendment shall be effective on Friday, May 6, 2016 at 5:00 PM, Eastern Daylight Time.

IN WITNESS WHEREOF, the Corporation has caused this CERTIFICATE OF AMENDMENT to be signed by Anastasia Nyrkovskaya, its Chief Financial Officer and Treasurer, as of the 5th day of May, 2016.

VRINGO, INC.

By: /s/ Anastasia Nyrkovskaya
Name: Anastasia Nyrkovskaya
Title: Chief Financial Officer and Treasurer

CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
FORM HOLDINGS CORP.

FORM HOLDINGS CORP., a Delaware corporation (the "Corporation''), does hereby certify that:

FIRST: The name of the Corporation is FORM HOLDINGS CORP.

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 2006 and the Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 22, 2010, and as further amended by the Certificates of Amendment of the Amended and Restated Certificate of Incorporation on July 19, 2012, on November 24, 2015 and on May 5, 2016.

THIRD: The Board of Directors of the Corporation (the "Board"), acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware (the "DGCL"), adopted resolutions amending the Corporation's Amended and Restated Certificate of Incorporation as follows:

Article Fifth, Section (2) of the Corporation's Amended and Restated Certificate of Incorporation is hereby deleted in its entirety and replaced with the following:

"(2) Subject to the rights of the holders of any series of Preferred Stock then outstanding, any directors, or the entire Board of Directors, may be removed from office, with or without cause, by the affirmative vote of the holders of at least a majority of the total voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class."

FOURTH: Thereafter, pursuant to a resolution of the Board, this Certificate of Amendment was submitted to the stockholders of the Corporation for their approval, and was duly adopted in accordance with the provisions of Sections 222 and 242 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this CERTIFICATE OF AMENDMENT to be signed by Anastasia Nyrkovskaya, its Chief Financial Officer, as of the 28th day of November, 2016.

FORM HOLDINGS CORP.

By: /s/ Anastasia Nyrkovskaya
Name: Anastasia Nyrkovskaya
Title: Chief Financial Officer and Treasurer

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:49 PM 11/28/2016
FILED 04:49 PM 11/28/2016
SR 20166803529 - File Number 4090975

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:25 AM 12/23/2016
FILED 11:25 AM 12/23/2016
SR 20167246612 - File Number 4090975

FORM HOLDINGS CORP.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES D CONVERTIBLE PREFERRED STOCK**

WHEREAS, the Amended and Restated Certificate of Incorporation of Form Holdings Corp., a Delaware corporation (the "Corporation"), provides for a class of its authorized stock known as preferred stock, comprised of 5,000,000 shares, issuable from time to time in one or more series;

WHEREAS, the Board of Directors of the Corporation (the "Board of Directors") is authorized to fix the dividend rights, voting rights, conversion rights, redemption privileges and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 500,000 shares of the preferred stock which the Corporation has the authority to issue, classified as Series D Convertible Preferred Stock, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock in exchange for other securities, rights, or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series D Convertible Preferred Stock", The initial number of authorized shares of the Series D Convertible Preferred Stock shall be 500,000, which, except as provided herein, shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series D Convertible Preferred Stock. Each share of the Series D Convertible Preferred Stock shall have a par value of $0.01.

2. Dividends.

   2.1. Dividends and Distributions to the Holders of Common Stock, From and after the first date of issuance of any shares of Series D Convertible Preferred Stock (the "Initial Issuance Date"), the holders of Series D Convertible Preferred Stock (each, a "Holder" and collectively, the "Holders") shall be entitled to receive such dividends paid and distributions made to the holders of common stock, par value $0.01 per share (the "Common Stock"), pro rata to the holders of Common Stock to the same extent as if such Holders had converted the Series D Convertible Preferred Stock into Common Stock and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

2.2. Payment of Dividends. In addition to the dividends described in Section 2.1, from and after the date of the issuance of any shares of Series D Convertible Preferred Stock, dividends at the rate per annum of $4.32 per share shall accrue on such shares of Series D Convertible Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Convertible Preferred Stock) (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided, however, that except as set forth in the following sentence of this Section 2.2. in Section 4, or in Section 7, such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless the holders of the Series D Convertible Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series D Convertible Preferred Stock in an amount at least equal to (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series D Convertible Preferred Stock and not previously paid and (ii) the amount required to be paid pursuant to Section 2.1.

3. Liquidation Preference.

3.1. Preferential Payments to Holders of Series D Convertible Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, subject to the rights of the holders of any other class of preferred stock, the holders of shares of Series D Convertible Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the Stated Value (defined below) plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series D Convertible Preferred Stock been converted into Common Stock pursuant to Section 6 immediately prior to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the "Series D Liquidation Preference Amount"). If upon any such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the Holders the full amount to which they shall be entitled under this Section 3.1, the Holders shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

3.2. Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series D Convertible Preferred Stock (subject to the rights of the holders of any other class of preferred stock), the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

4. Deemed Liquidation Events.

4.1. Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

4.1.1. "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

4.1.2. "Deemed Liquidation Event" means that the Corporation shall, directly or indirectly, in one or more related transactions, (A) (i) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another Person or (ii) permit any subsidiary of the Corporation to merge or consolidate with or into (whether or not the subsidiary of the Corporation is the surviving corporation) another Person, if the Corporation issues shares of its capital stock pursuant to such merger or consolidation (in either (i) or (ii) of this clause (A)), other than a consolidation or merger involving the Corporation or a subsidiary of the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such consolidation or merger continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such consolidation or merger, at least a majority of the Voting Stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly-owned subsidiary of another corporation immediately following such consolidation or merger, the parent corporation of such surviving or resulting corporation), or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation on a consolidated basis to another entity, or (C) allow another Person(s) to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other Person(s) making or party to, or associated or affiliated with the other Person(s) making or party to, such stock purchase agreement or other business combination).

4.1.3. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

4.1.4. "Eligible Market" means the New York Stock Exchange, Inc., the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, and the NASDAQ Capital Market, and any successor to any of the foregoing.

4.1.5. "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

4.1.6. "Required Holders" means the holders of record of a majority of the then outstanding shares of Series D Convertible Preferred Stock.

4.1.7. "Stated Value" shall mean $48 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series D Convertible Preferred Stock after the Initial Issuance Date,

4.1.8. "Trading Day" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that "Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time),

4.1.9. "Voting Stock" means capital stock of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees thereof (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency that has not occurred at the time of determination).

4.2. Effecting a Deemed Liquidation Event.

4.2.1. The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in clause (A) of the definition of "Deemed Liquidation Event" unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.

4.2.2. In the event of a Deemed Liquidation Event, if the Corporation does not effect a dissolution of the Corporation under the Delaware General Corporation Law ("DGCL") within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series D Convertible Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the repayment and cancellation of such shares of Series D Convertible Preferred Stock, and (iii) if the holders of at least 50% of the then outstanding shares of Series D Convertible Preferred Stock so request in a written instrument delivered to the Corporation not later than 30 days after receipt of the notice described in clause (i), the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors), together with any other assets of the Corporation available for distribution to its stockholders, subject to the rights of any other existing class of preferred stock, all to the extent permitted by Delaware law governing distributions to stockholders (the "Available Proceeds"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to repay and cancel all outstanding shares of Series D Convertible Preferred Stock at a price per share equal to the Series D Liquidation Preference Amount, Notwithstanding the foregoing, in the event of a repayment pursuant to the preceding sentence, if the Available Proceeds are not sufficient to repay all outstanding shares of Series D Convertible Preferred Stock, the Corporation shall ratably repay each Holder's shares of Series D Convertible Preferred Stock to the fullest extent of such Available Proceeds, and shall repay the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or repayment provided for in this Section 4.2.2, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

4.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon the occurrence of a Deemed Liquidation Event shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors.

4.4. Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to clause (A)(i) of the definition thereof, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), the transaction agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 4.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

5. Voting Rights.

5.1. General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each Holder shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series D Convertible Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Amended and Restated Certificate of Incorporation, the holders of Series D Convertible Preferred Stock shall vote together with the holders of Common Stock as a single class,

5.2. Election of Directors. The Holders of record of the shares of Series D Convertible Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "Series D Director"). If the holders of shares of Series D Convertible Preferred Stock fail to elect a director to fill the directorship for which they are entitled to elect a director, voting exclusively and as a separate class, pursuant to the first sentence of this Section 5.2, then the directorship not so filled shall remain vacant until such time as the holders of the Series D Convertible Preferred Stock elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series D Convertible Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 5.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 5.2. The initial Series D Director shall be Mr. Andrew Heyer, C/O FORM Holdings Corp., 780 Third Avenue, 12th Floor, New York, NY 10017. The rights of the holders of the Series D Convertible Preferred Stock to elect a Series D Director shall terminate on the first date following the Initial Issuance Date on which the shares of Common Stock underlying the Series D Convertible Preferred Stock represent beneficial ownership (as such term is defined in Rule 13d-3 under the Exchange Act), in the aggregate, of less than five percent (5%) of the Corporation's issued and outstanding shares of Common Stock on an as-converted basis.

6. Conversion.

6.1. Holder's Right to Convert.

The holders of the Series D Convertible Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

6.1.1. Right to Convert.

6.1.1.1. Conversion Ratio. Each share of Series D Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Stated Value (plus any accrued but unpaid dividends) by the Series D Conversion Price (as defined below) in effect at the time of conversion (the result of such fraction, the "Series D Conversion Rate"). The "Series D Conversion Price" shall initially be equal to $6.00. Such initial Series D Conversion Price, and the rate at which shares of Series D Convertible Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. On the Initial Issuance Date, the Series D Conversion Rate shall be equal to 8 shares of Common Stock for each share of Series D Convertible Preferred Stock.

6.1.1.2. Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series D Convertible Preferred Stock.

6.1.2. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series D Convertible Preferred Stock. In lieu of any fractional shares to which the Holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series D Convertible Preferred Stock the Holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

6.2. Mechanics of Conversion. The conversion of Series D Convertible Preferred Stock shall be conducted in the following manner:

6.2.1. Conversion Notice. The Holder of record of shares of Series D Convertible Preferred Stock being converted shall (A) transmit by email (or otherwise deliver) a copy of a properly completed notice of conversion executed by the registered Holder of the Series D Convertible Preferred Stock subject to such conversion in the form attached hereto as Exhibit A (the "Conversion Notice") to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporation's registered transfer agent (the "Transfer Agent") (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 6.2.3, surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates, if any, representing the Series D Convertible Preferred Stock being converted (or compliance with the procedures set forth in Section 10) (the "Preferred Stock Certificates").

6.2.2. Corporation's Response. Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within three (3) Trading Days, send, via email, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the third (3rd) Trading Day following the date of receipt by the Corporation of such Conversion Notice, (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series D Convertible Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series D Convertible Preferred Stock being converted, then the Corporation shall or shall direct the Transfer Agent, as soon as practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series D Convertible Preferred Stock not converted or it shall direct the Transfer Agent to update the Holder's account to reflect the number of shares of Series D Convertible Preferred Stock not converted.

6.2.3. Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series D Convertible Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the Preferred Stock Certificate, if any, unless (A) the full or remaining number of shares of Series D Convertible Preferred Stock represented by the Preferred Stock Certificate are being converted, in which case the Holder shall deliver such Preferred Stock Certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series D Convertible Preferred Stock upon physical surrender of any Series D Convertible Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series D Convertible Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series D Convertible Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series D Convertible Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Series D Convertible Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series D Convertible Preferred Stock unless such Holder first physically surrenders the certificate representing the Series D Convertible Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series D Convertible Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series D Convertible Preferred Stock, the number of shares of Series D Convertible Preferred Stock represented by such certificate may be less than the number of shares of Series D Convertible Preferred Stock stated on the face thereof.

6.2.4. Reservation of Shares. The Corporation shall, so long as any shares of Series D Convertible Preferred Stock are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series D Convertible Preferred Stock according to the terms hereof, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series D Convertible Preferred Stock then outstanding; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series D Convertible Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in all reasonable efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series D Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series D Convertible Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Series D Convertible Conversion Price.

6.2.5. Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Series D Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via email within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Series D Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via email the disputed arithmetic calculation of the Series D Conversion Rate to any "big four" international accounting firm that is reasonably acceptable to the Corporation and the Holder, The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error,

6.2.6. Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series D Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the date of conversion,

6.2.7. Effect of Conversion. All shares of Series D Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote in the capacity of a Holder, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversation as provided in Section6.1.2, and payment of any accrued but unpaid dividends thereon (whether or not declared). Any shares of Series D Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series D Convertible Preferred Stock accordingly.

6.2.8. Transfer Taxes. The issuance of certificates, if any, for shares of the Common Stock on conversion of this Series D Convertible Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series D Convertible Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

6.2.9. Corporation's Failure to Timely Convert. If within three (3) Trading Days after the Corporation's receipt of the copy of a Conversion Notice, the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series D Convertible Preferred Stock (a "Conversion Failure"), and if on or after such third (3rd) Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a "Buy-In"), then, in addition to all other remedies available to the Holder, the Corporation shall, within three (3) Trading Days after the Holder's request pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate. "Closing Sale Price" means, for the shares of Common Stock as of any date, the last closing price for such security on the principal market on which such security is traded, as reported by Bloomberg L.P., or if the foregoing does not apply, the last closing price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg L.P., or, if no closing price is reported for such security by Bloomberg L.P., the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC).

6.3. Corporation's Right to Convert.

6.3.1. At any time or from time to time after the Initial Issuance Date of the Series D Convertible Preferred Stock, if the volume weighted average price per share, as published by Bloomberg L.P, (or if Bloomberg L.P, does not then exist, a comparable publication) ("VWAP") of the shares of Common Stock of the Corporation on its principal trading market that is an Eligible Market (the "Principal Market") over any twenty (20) of the thirty (30) consecutive Trading Days exceeds $9.00 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization) (the "Corporation Conversion Right Event"), the Corporation will have the right, but not the obligation, by notice given no more than ten (10) Trading Days after the occurrence of such Corporation Conversion Right Event, to convert each outstanding share of Series D Convertible Preferred Stock into a number of fully paid and nonassessable shares of Common Stock calculated based on the then applicable Series D Conversion Rate.

6.3.2. To exercise the Corporation's right set forth in Section 6.3.1, the Corporation shall deliver to each Holder of record of Series D Convertible Preferred Stock an irrevocable written notice (a "Corporation Conversion Notice") during the ten (10) Trading Day period referenced above indicating the effective date of the conversion (the "Corporation Conversion Date"), which Corporation Conversion Date shall be not more than sixty (60), nor less than five (5), days following delivery of the Corporation Conversion Notice.

6.3.3. On the Corporation Conversion Date, the outstanding shares of Series D Convertible Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares, if any, are surrendered to the Corporation or its Transfer Agent, and certificates previously representing shares of Series D Convertible Preferred shall represent only the shares of Common Stock into which the shares of Series D Convertible Preferred previously represented thereby have been converted pursuant hereto; *provided*, *however*, that the Corporation shall not be obligated to issue the shares of Common Stock issuable upon such conversion of any shares of Series D Convertible Preferred unless certificates evidencing such shares of Series D Convertible Preferred, if any, are either delivered to the Corporation or the holder notifies the Corporation that such certificates, if any, have been lost, stolen, or destroyed, and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the occurrence of the conversion of the Series D Convertible Preferred pursuant to this Section 6.3, the Holders of shares of Series D Convertible Preferred shall surrender the certificates representing such shares to the Corporation and the Corporation shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section 6.2.2) to the Holder within three (3) Business Days of the Holder's delivery of the applicable Series D Convertible Preferred certificates,

7. Repayment of Series D Convertible Preferred Stock.

7.1. General. On the date that is the seven (7) year anniversary after the Initial Issuance Date of the Series D Convertible Preferred (the "Maturity Date"), the Corporation shall, in accordance with Section 7.2 hereof, repay and cancel each share of Series D Convertible Preferred, at a price per share of the Series D Convertible Preferred equal to the Series D Liquidation Preference Amount, plus an amount equal to any accrued but unpaid dividends payable thereon until the Maturity Date.

7.2. Share Issuance.

7.2.1. On the Maturity Date, the Corporation, at its sole option, may elect to pay to the Holders the Series D Liquidation Preference Amount pursuant to Section 7.1: (i) in cash; (ii) by delivery of shares of Common Stock; or (iii) through any combination of cash and/or Common Stock.

7.2.2. If the Corporation elects to make a payment, or any portion thereof, pursuant to this Section 7, in shares of Common Stock, the number of shares deliverable shall be determined by (A) dividing (x) the cash amount of such payment that would apply if no payment were to be made in Common Stock, or such portion, *by* (y) the VWAP of the Common Stock for the period of thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding the Maturity Date (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization during such period) (the "Base Price") and adding to the number of shares determined in accordance with clause (A), (B) an additional number of shares of Common Stock (the "Premium Shares"), calculated as follows: (i) if the Base Price as calculated pursuant to clause (A) above is greater than $9.00, no Premium Shares shall be issued, (ii) if the Base Price as calculated pursuant to clause (A) above is greater than $7.00 and equal to or less than $9.00, a number of shares equal to 5% of the shares to be issued pursuant to Section 7.2.2(A), (iii) if the Base Price as calculated pursuant to clause (A) above is greater than $6.00 and equal to or less than $7.00, a number of shares equal to 10% of the shares to be issued pursuant to Section 7.2.2(A), (iv) if the Base Price as calculated pursuant to clause (A) above is greater than $5.00 and equal to or less than $6.00, a number of shares equal to 20% of the shares to be issued pursuant to Section 7.2.2(A) and (v) if the Base Price as calculated pursuant to clause (A) above is less than or equal to $5.00, a number of shares equal to 25% of the shares to issued pursuant to Section 7.2.2(A). All per share prices set forth in Section 7.2.2 shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization after the Initial Issuance Date.

8. Adjustment of Series D Conversion Price.

8.1.1. Adjustment of Series D Conversion Price upon Subdivision or Combination of Common Stock. The Series D Conversion Price shall be subject to adjustment from time to time in accordance with this Section 8. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series D Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Series D Conversion Price in effect immediately prior to such combination will be proportionately increased.

8.1.2. Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 4, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series D Convertible Preferred Stock) is converted into or exchanged for securities, cash or other property, then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series D Convertible Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series D Convertible Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 8 with respect to the rights and interests thereafter of the holders of the Series D Convertible Preferred Stock, to the end that the provisions set forth in this Section 8 (and the provisions with respect to changes in and other adjustments of the Series D Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

8.2. Notices.

8.2.1. Immediately upon any adjustment of the Series D Conversion Rate and Series D Conversion Price pursuant to Section 8 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 6.2.5.

8.2.2. Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, or (B) with respect to any pro rata subscription offer to holders of Common Stock,

8.2.3. The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which a Deemed Liquidation Event will take place.

9. Status of Converted Stock. In the event any shares of Series D Convertible Preferred Stock shall be converted pursuant to Sections 6 or 7 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

10. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series D Convertible Preferred Stock Certificates representing the Series D Convertible Preferred Stock, if any, and, in the case of loss, theft or destruction, of an indemnification undertaking (with surety, if reasonably requested by the Corporation) by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series D Convertible Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series D Convertible Preferred Stock into Common Stock.

11. Remedies, Characterizations. Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series D Convertible Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designation. The Corporation covenants to each holder of Series D Convertible Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series D Convertible Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series D Convertible Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series D Convertible Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required,

12. Notice. Whenever notice or other communication is required to be given hereunder, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series D Convertible Preferred Stock maintained by the Corporation as set forth in Section 15.

13. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series D Convertible Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

14. Transfer of Series D Convertible Preferred Stock. A Holder may assign some or all of the Series D Convertible Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

15. Series D Convertible Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series D Convertible Preferred Stock, in which the Corporation shall record the name, address and email address of the persons in whose name the Series D Convertible Preferred Stock have been issued, as well as the name, address and email address of each transferee. The Corporation may treat the person in whose name any Series D Convertible Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

16. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, this Certificate of Designation or otherwise with respect to the issuance of the Series D Convertible Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL and the applicable provisions hereof This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

17. General Provisions. In addition to the above provisions with respect to Series D Convertible Preferred Stock, such Series D Convertible Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Amended and Restated Certificate of Incorporation of the Corporation with respect to preferred stock of the Corporation generally.

18. Waiver and Amendment. Any of the rights, powers, preferences and other terms of the Series D Convertible Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series D Convertible Preferred Stock by the affirmative written consent or vote of the holders of at least 50 % of the shares of Series D Convertible Preferred Stock then outstanding.

signature page follows

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed by the undersigned this 23rd day of December, 2016.

FORM HOLDINGS CORP.

By: /s/ Andrew D. Perlman
Name: Andrew D. Perlman
Title: Chief Executive Officer

EXHIBIT A

FORM HOLDINGS CORP.

The undersigned hereby elects to convert the number of shares of Series D Convertible Preferred Stock, par value $0.01 per share (the **"Series D Convertible Preferred Stock"),** of Form Holdings Corp., a Delaware corporation (the **"Corporation"),** indicated below into shares of Common Stock, par value $0.01 per share (the **"Common Stock"),** of the Corporation, as of the date specified below.

Date of Conversion: _____

Number of shares of Series D Convertible Preferred Stock to be converted: _____

Stock certificate no(s). of Series D Convertible Preferred Stock to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Series D Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series D Convertible Preferred Stock are being converted in the following name and to the following address:

Issue to: _____

_____

Address: _____

Telephone Number: _____

Email address: _____

Authorization: _____

By: _____
Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:27 PM 01/05/2018
FILED 02:27 PM 01/05/2018
SR 20180088930 - File Number 4090975

CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
FORM HOLDINGS CORP.

FORM HOLDINGS CORP., a Delaware corporation (the "Corporation"), does hereby certify that:

FIRST: The name of the Corporation is FORM HOLDINGS CORP.

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on January 9, 2006 and the Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 22, 2010, and as further amended by the Certificates of Amendment of the Amended and Restated Certificate of Incorporation on July 19, 2012, on November 24, 2015, on November 28, 2016, and on May 5, 2016.

THIRD: The Board of Directors of the Corporation (the "Board"), acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware (the "DGCL"), adopted resolutions amending the Corporation's Amended and Restated Certificate of Incorporation as follows:

Article First of the Corporation's Amended and Restated Certificate of Incorporation is hereby deleted in its entirety and replaced with the following:

"FIRST: The name of the Corporation (hereinafter the "Corporation") is XpresSpa Group, Inc."

FOURTH: Thereafter, pursuant to a resolution of the Board, this Certificate of Amendment was duly adopted in accordance with the provisions of Sections 222 and 242 of the DGCL.

FIFTH: This Certificate of Amendment shall be effective on January 5, 2018 at 4:01 P.M., Eastern Standard Time.

IN WITNESS WHEREOF, the Corporation has caused this CERTIFICATE OF AMENDMENT to be signed by Andrew Perlman, its Chief Executive Officer, as of the 5th day of January, 2018.

FORM HOLDINGS CORP.

By: /s/ Andrew Perlman
Name: Andrew Perlman
Title: Chief Executive Officer

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:42 AM 11/13/2018
FILED 10:42 AM 11/13/2018
SR 20187602685 - File Number 4090975

XPRESSPA GROUP, INC.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES E CONVERTIBLE PREFERRED STOCK**

WHEREAS, the Amended and Restated Certificate of Incorporation (the "Charter") of XpresSpa Group, Inc., a Delaware corporation (the "Corporation"), provides for a class of its authorized stock known as preferred stock, comprised of 5,000,000 shares, issuable from time to time in one or more series;

WHEREAS, the Board of Directors of the Corporation (the "Board of Directors") is authorized to fix the dividend rights, voting rights, conversion rights, redemption privileges and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 1,473,300 shares of the preferred stock which the Corporation has the authority to issue, classified as Series E Convertible Preferred Stock, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock in exchange for other securities, rights, or property and does hereby fix and determine in this Certificate of Designation of Preferences, Rights and Limitations of the Series E Convertible Preferred Stock (this "Certificate of Designation") the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series E Convertible Preferred Stock". The initial number of authorized shares of the Series E Convertible Preferred Stock shall be 1,473,300, which, except as provided herein, shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series E Convertible Preferred Stock. Each share of the Series E Convertible Preferred Stock shall have a par value of $0.01.

2. Dividends.

2.1. Dividends and Distributions to the Holders of Common Stock. From and after the first date of issuance of any shares of Series E Convertible Preferred Stock (the "Initial Issuance Date"), the holders of Series E Convertible Preferred Stock (each, a "Holder" and collectively, the "Holders") shall be entitled to receive such dividends paid and distributions made to the holders of common stock, par value $0.01 per share (the "Common Stock"), pro rata to the holders of Common Stock to the same extent as if such Holders had converted the Series E Convertible Preferred Stock into Common Stock and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

2.2. Payment of Dividends. In addition to the dividends described in Section 2.1, from and after the date of the issuance of any shares of Series E Convertible Preferred Stock, dividends at the rate per annum of $0.186 per share shall accrue on such shares of Series E Convertible Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series E Convertible Preferred Stock) (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided, however, that except as set forth in the following sentence of this Section 2.2, in Section 4, or in Section 7, such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (including the Series D Convertible Preferred Stock and other than dividends on shares of Common Stock payable in shares of Common Stock) unless the holders of the Series E Convertible Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series E Convertible Preferred Stock in an amount at least equal to (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series E Convertible Preferred Stock and not previously paid and (ii) the amount required to be paid pursuant to Section 2.1. The dividends described in this Section 2.2 may be paid in shares of Series E Convertible Preferred Stock valued at $3.10 per share (provided that any accrued and unpaid dividend payable at maturity may be paid in shares of Common Stock).

3. Liquidation Preference.

3.1 Preferential Payments to Holders of Series E Convertible Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, subject to the rights of the holders of any other class of preferred stock, the holders of shares of Series E Convertible Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series D Convertible Preferred Stock by reason of their ownership thereof or to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the Stated Value (defined below) plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series E Convertible Preferred Stock been converted into Common Stock pursuant to Section 6 immediately prior to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the "Series E Liquidation Preference Amount"). If upon any such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the Holders the full amount to which they shall be entitled under this Section 3.1, the Holders shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

3.2. Payments to Holders of Series D Convertible Preferred Stock and Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series E Convertible Preferred Stock (subject to the rights of the holders of any other class of preferred stock), the remaining assets of the Corporation available for distribution to its stockholders shall be distributed in accordance with the other provisions of the Charter, including as set forth in the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock (the "Series D Certificate of Designation"). For the avoidance of doubt, this Certificate of Designation shall be deemed to amend the Series D Certificate of Designation so as to effect the senior ranking of the Series E Preferred Stock and the liquidation preference set forth in this Section 3.

4. Deemed Liquidation Events.

4.1. Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

4.1.1. "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

4.1.2. "Deemed Liquidation Event" means that the Corporation shall, directly or indirectly, in one or more related transactions, (A) (i) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another Person or (ii) permit any subsidiary of the Corporation to merge or consolidate with or into (whether or not the subsidiary of the Corporation is the surviving corporation) another Person, if the Corporation issues shares of its capital stock pursuant to such merger or consolidation (in either (i) or (ii) of this clause (A)), other than a consolidation or merger involving the Corporation or a subsidiary of the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such consolidation or merger continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such consolidation or merger, at least a majority of the Voting Stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly-owned subsidiary of another corporation immediately following such consolidation or merger, the parent corporation of such surviving or resulting corporation), or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation on a consolidated basis to another entity, or (C) allow another Person(s) to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other Person(s) making or party to, or associated or affiliated with the other Person(s) making or party to, such stock purchase agreement or other business combination).

4.1.3. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

4.1.4. "Eligible Market" means the New York Stock Exchange, Inc., the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, and the Nasdaq Capital Market, and any successor to any of the foregoing.

4.1.5. "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

4.1.6. "Required Holders" means the holders of record of a majority of the then outstanding shares of Series E Convertible Preferred Stock.

4.1.7. "Stated Value" shall mean $3.10 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series E Convertible Preferred Stock after the Initial Issuance Date.

4.1.8. 'Trading Day" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that 'Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

4.1.9. "Voting Stock" means capital stock of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees thereof (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency that has not occurred at the time of determination).

4.2. Effecting a Deemed Liquidation Event.

4.2.1. The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in clause (A) of the definition of "Deemed Liquidation Event" unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.

4.2.2. In the event of a Deemed Liquidation Event, if the Corporation does not effect a dissolution of the Corporation under the Delaware General Corporation Law ("DGCL") within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series E Convertible Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the repayment and cancellation of such shares of Series E Convertible Preferred Stock, and (iii) if the holders of at least 50% of the then outstanding shares of Series E Convertible Preferred Stock so request in a written instrument delivered to the Corporation not later than 30 days after receipt of the notice described in clause (i), the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors), together with any other assets of the Corporation available for distribution to its stockholders, subject to the rights of any other existing class of preferred stock, all to the extent permitted by Delaware law governing distributions to stockholders (the "Available Proceeds"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to repay and cancel all outstanding shares of Series E Convertible Preferred Stock at a price per share equal to the Series E Liquidation Preference Amount. Notwithstanding the foregoing, in the event of a repayment pursuant to the preceding sentence, if the Available Proceeds are not sufficient to repay all outstanding shares of Series E Convertible Preferred Stock, the Corporation shall ratably repay each Holder's shares of Series E Convertible Preferred Stock to the fullest extent of such Available Proceeds, and shall repay the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or repayment provided for in this Section 4.2.2, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

4.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon the occurrence of a Deemed Liquidation Event shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors.

4.4. Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to clause (A)(i) of the definition thereof, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), the transaction agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 4.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

5. Voting Rights. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each Holder shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series E Convertible Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Charter, the holders of Series E Convertible Preferred Stock shall vote together with the holders of Common Stock as a single class.

6. Conversion.

6.1. Holder's Right to Convert. The holders of the Series E Convertible Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

6.1.1. Right to Convert.

6.1.1.1. Conversion Ratio. Each share of Series E Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Stated Value (plus any accrued but unpaid dividends) by the Series E Conversion Price (as defined below) in effect at the time of conversion (the result of such fraction, the "Series E Conversion Rate"). The "Series E Conversion Price" shall initially be equal to $0.62. Such initial Series E Conversion Price, and the rate at which shares of Series E Convertible Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. On the Initial Issuance Date, the Series E Conversion Rate shall be equal to 5 shares of Common Stock for each share of Series E Convertible Preferred Stock.

6.1.1.2. Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series E Convertible Preferred Stock.

6.1.2. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series E Convertible Preferred Stock. In lieu of any fractional shares to which the Holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series E Convertible Preferred Stock the Holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

6.2. Mechanics of Conversion. The conversion of Series E Convertible Preferred Stock shall be conducted in the following manner:

6.2.1. Conversion Notice. The Holder of record of shares of Series E Convertible Preferred Stock being converted shall (A) transmit by email (or otherwise deliver) a copy of a properly completed notice of conversion executed by the registered Holder of the Series E Convertible Preferred Stock subject to such conversion in the form attached hereto as Exhibit A (the "Conversion Notice") to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporation's registered transfer agent (the "Transfer Agent") (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 6.2.3, surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates, if any, representing the Series E Convertible Preferred Stock being converted (or compliance with the procedures set forth in Section 11) (the "Preferred Stock Certificates").

6.2.2. Corporation's Response. Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within three (3) Trading Days, send, via email, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the third (3rd) Trading Day following the date of receipt by the Corporation of such Conversion Notice, (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series E Convertible Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series E Convertible Preferred Stock being converted, then the Corporation shall or shall direct the Transfer Agent, as soon as practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series E Convertible Preferred Stock not converted or it shall direct the Transfer Agent to update the Holder's account to reflect the number of shares of Series E Convertible Preferred Stock not converted.

6.2.3. Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series E Convertible Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the Preferred Stock Certificate, if any, unless (A) the full or remaining number of shares of Series E Convertible Preferred Stock represented by the Preferred Stock Certificate are being converted, in which case the Holder shall deliver such Preferred Stock Certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series E Convertible Preferred Stock upon physical surrender of any Series E Convertible Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series E Convertible Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series E Convertible Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series E Convertible Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Series E Convertible Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series E Convertible Preferred Stock unless such Holder first physically surrenders the certificate representing the Series E Convertible Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series E Convertible Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series E Convertible Preferred Stock, the number of shares of Series E Convertible Preferred Stock represented by such certificate may be less than the number of shares of Series E Convertible Preferred Stock stated on the face thereof.

6.2.4. Reservation of Shares. The Corporation shall, so long as any shares of Series E Convertible Preferred Stock are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series E Convertible Preferred Stock according to the terms hereof, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series E Convertible Preferred Stock then outstanding; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series E Convertible Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in all reasonable efforts to obtain the requisite stockholder approval of any necessary amendment to the Charter. Before taking any action which would cause an adjustment reducing the Series E Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series E Convertible Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Series E Convertible Conversion Price.

6.2.5. Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Series E Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via email within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Series E Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via email the disputed arithmetic calculation of the Series E Conversion Rate to any "big four" international accounting firm that is reasonably acceptable to the Corporation and the Holder. The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

6.2.6. Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series E Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the date of conversion.

6.2.7. Effect of Conversion. All shares of Series E Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote in the capacity of a Holder, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversation as provided in Section 6.1.2, and payment of any accrued but unpaid dividends thereon (whether or not declared). Any shares of Series E Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series E Convertible Preferred Stock accordingly.

6.2.8. Transfer Taxes. The issuance of certificates, if any, for shares of the Common Stock on conversion of this Series E Convertible Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series E Convertible Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

6.2.9. Corporation's Failure to Timely Convert. If within three (3) Trading Days after the Corporation's receipt of the copy of a Conversion Notice, the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series E Convertible Preferred Stock (a "Conversion Failure"), and if on or after such third (3rd) Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a "Buy-In"), then, in addition to all other remedies available to the Holder, the Corporation shall, within three (3) Trading Days after the Holder's request pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate. "Closing Sale Price" means, for the shares of Common Stock as of any date, the last closing price for such security on the principal market on which such security is traded, as reported by Bloomberg L.P., or if the foregoing does not apply, the last closing price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg L.P., or, if no closing price is reported for such security by Bloomberg L.P., the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC).

6.3. Corporation's Right to Convert.

6.3.1. At any time or from time to time after the Initial Issuance Date of the Series E Convertible Preferred Stock, if the volume weighted average price per share, as published by Bloomberg L.P. (or if Bloomberg L.P. does not then exist, a comparable publication) ("VWAP") of the shares of Common Stock of the Corporation on its principal trading market that is an Eligible Market (the "Principal Market") over any twenty (20) of the thirty (30) consecutive Trading Days exceeds $9.00 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization) (the "Corporation Conversion Right Event"), the Corporation will have the right, but not the obligation, by notice given no more than ten (10) Trading Days after the occurrence of such Corporation Conversion Right Event, to convert each outstanding share of Series E Convertible Preferred Stock into a number of fully paid and nonassessable shares of Common Stock calculated based on the then applicable Series E Conversion Rate.

6.3.2. To exercise the Corporation's right set forth in Section 6.3.1, the Corporation shall deliver to each Holder of record of Series E Convertible Preferred Stock an irrevocable written notice (a "Corporation Conversion Notice") during the ten (10) Trading Day period referenced above indicating the effective date of the conversion (the "Corporation Conversion Date"), which Corporation Conversion Date shall be not more than sixty (60), nor less than five (5), days following delivery of the Corporation Conversion Notice.

6.3.3. On the Corporation Conversion Date, the outstanding shares of Series E Convertible Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares, if any, are surrendered to the Corporation or its Transfer Agent, and certificates previously representing shares of Series E Convertible Preferred shall represent only the shares of Common Stock into which the shares of Series E Convertible Preferred previously represented thereby have been converted pursuant hereto; *provided*, *however*, that the Corporation shall not be obligated to issue the shares of Common Stock issuable upon such conversion of any shares of Series E Convertible Preferred unless certificates evidencing such shares of Series E Convertible Preferred, if any, are either delivered to the Corporation or the holder notifies the Corporation that such certificates, if any, have been lost, stolen, or destroyed, and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the occurrence of the conversion of the Series E Convertible Preferred pursuant to this Section 6.3, the Holders of shares of Series E Convertible Preferred shall surrender the certificates representing such shares to the Corporation and the Corporation shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section 6.2.2) to the Holder within three (3) Business Days of the Holder's delivery of the applicable Series E Convertible Preferred certificates.

7. Repayment of Series E Convertible Preferred Stock.

7.1. General. On the date that is the seven (7) year anniversary after the Initial Issuance Date of the Series E Convertible Preferred (the "Maturity Date"), the Corporation shall, in accordance with Section 7.2 hereof, repay and cancel each share of Series E Convertible Preferred, at a price per share of the Series E Convertible Preferred equal to the Series E Liquidation Preference Amount, plus an amount equal to any accrued but unpaid dividends payable thereon until the Maturity Date.

7.2. Share Issuance.

7.2.1. On the Maturity Date, the Corporation, at its sole option, may elect to pay to the Holders the Series E Liquidation Preference Amount pursuant to Section 7.1: (i) in cash; (ii) by delivery of shares of Common Stock; or (iii) through any combination of cash and/or Common Stock.

7.2.2. If the Corporation elects to make a payment, or any portion thereof, pursuant to this Section 7, in shares of Common Stock, the number of shares deliverable shall be determined by (A) dividing (x) the cash amount of such payment that would apply if no payment were to be made in Common Stock, or such portion, *by* (y) the VWAP of the Common Stock for the period of thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding the Maturity Date (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization during such period); provided, however that such VWAP of the Common Stock shall not be less than $0.62 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization during such period) (the "Base Price") and adding to the number of shares determined in accordance with clause (A), (B) an additional number of shares of Common Stock (the "Premium Shares"), calculated as follows: (i) if the Base Price as calculated pursuant to clause (A) above is greater than $9.00, no Premium Shares shall be issued, (ii) if the Base Price as calculated pursuant to clause (A) above is greater than $7.00 and equal to or less than $9.00, a number of shares equal to 5% of the shares to be issued pursuant to Section 7.2.2(A), (iii) if the Base Price as calculated pursuant to clause (A) above is greater than $6.00 and equal to or less than $7.00, a number of shares equal to 10% of the shares to be issued pursuant to Section 7.2.2(A), (iv) if the Base Price as calculated pursuant to clause (A) above is greater than $5.00 and equal to or less than $6.00, a number of shares equal to 20% of the shares to be issued pursuant to Section 7.2.2(A) and (v) if the Base Price as calculated pursuant to clause (A) above is less than or equal to $5.00, a number of shares equal to 25% of the shares to issued pursuant to Section 7.2.2(A). All per share prices set forth in Section 7.2.2 shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization after the Initial Issuance Date.

8. Adjustment of Series E Conversion Price.

8.1.1. Adjustment of Series E Conversion Price upon Subdivision or Combination of Common Stock. The Series E Conversion Price shall be subject to adjustment from time to time in accordance with this Section 8. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series E Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Series E Conversion Price in effect immediately prior to such combination will be proportionately increased.

8.1.2. Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 4, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series E Convertible Preferred Stock) is converted into or exchanged for securities, cash or other property, then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series E Convertible Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series E Convertible Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 8 with respect to the rights and interests thereafter of the holders of the Series E Convertible Preferred Stock, to the end that the provisions set forth in this Section 8 (and the provisions with respect to changes in and other adjustments of the Series E Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series E Preferred Stock.

8.2. Notices.

8.2.1. Immediately upon any adjustment of the Series E Conversion Rate and Series E Conversion Price pursuant to Section 8 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 6.2.5.

8.2.2. Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, or (B) with respect to any pro rata subscription offer to holders of Common Stock.

8.2.3. The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which a Deemed Liquidation Event will take place.

9. Status of Converted Stock. In the event any shares of Series E Convertible Preferred Stock shall be converted pursuant to Sections 6 or 7 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

10. Series E Convertible Preferred Stock Protective Provisions.

10.1. At any time when shares of Series E Convertible Preferred Stock are outstanding, the Corporation shall not make payments in connection with any of the following without (in addition to any other vote required by law or the Charter) the written consent of the holders of a majority of the outstanding shares of Series E Convertible Preferred Stock:

10.1.1. any cash dividend or payment of any Indebtedness prior to the time such payment is due and payable or payment in cash of any due and payable Indebtedness where the Corporation may elect to make such payment in shares of capital stock or other equity securities of the Corporation, other than (i) prepayments made out of the proceeds of the sale of capital stock or other equity securities of the Corporation (other than sales of Series E Convertible Preferred Stock) or the incurrence of Indebtedness, so long as the aggregate amount of Indebtedness of the Corporation outstanding following such sale or incurrence is equal to or lesser than the aggregate amount of Indebtedness outstanding immediately prior to such sale or incurrence, (ii) prepayments made in shares of capital stock or other equity securities of the Corporation ranking junior to the Series E Convertible Preferred Stock, (iii) the election to pay dividends, pay any Indebtedness prior to the time such payment is due and payable or pay due and payable Indebtedness in cash if, at the time of such payment, the Corporation has an aggregate cash balance greater than the then aggregate Stated Value of all shares of Series E Convertible Preferred Stock issued prior to such payment (whether or not such shares are then outstanding) (such amount, the "Cash Balance Threshold") and has delivered to the holders of Series E Convertible Preferred Stock the Cash Balance Certificate (defined below), (iv) prepayments or elections to pay in cash with respect to up to an aggregate of $100,000 of Indebtedness that is not Indebtedness for borrowed money evidenced by bonds, notes, debentures or similar instruments or (v) prepayments made out of the proceeds of any Indebtedness incurred by the Corporation with American Express or any of its affiliates, so long as the Indebtedness to be prepaid has a higher interest rate than the Indebtedness incurred by the Corporation with American Express or any of its affiliates; or

10.1.2. any repurchase of any outstanding securities of the Corporation, other than (i) repurchases made out of the proceeds of the sale of capital stock or other equity securities of the Corporation (other than sales of Series E Convertible Preferred Stock) or the incurrence of Indebtedness, so long as the aggregate amount of Indebtedness of the Corporation outstanding following such sale or incurrence is equal to or lesser than the aggregate amount of Indebtedness outstanding immediately prior to such sale or incurrence or (ii) repurchases, if, at the time of such repurchase, the Corporation has an aggregate cash balance greater than the then-applicable Cash Balance Threshold and has delivered to the holders of Series E Convertible Preferred Stock the Cash Balance Certificate.

10.1.3. Prior to taking any action pursuant to Sections 10.1.1 (iii) or 10.1.2(ii) (each action a "Proposed Transaction"), the Company shall deliver to the holders of Series E Convertible Preferred Stock a certificate signed by an officer of the Company certifying that: (i) the Company's aggregate cash balance is greater than the Cash Balance Threshold on the date of the Proposed Transaction and at the close of each of the five Business Days immediately prior to the Proposed Transaction and (ii) after giving effect to the Proposed Transaction, the Company's aggregate cash balance will be greater than the Cash Balance Threshold (the "Cash Balance Certificate").

For purposes of this Certificate of Designation, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed (other than trade accounts payable incurred in the ordinary course of business), and (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Corporation's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

11. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series E Convertible Preferred Stock Certificates representing the Series E Convertible Preferred Stock, if any, and, in the case of loss, theft or destruction, of an indemnification undertaking (with surety, if reasonably requested by the Corporation) by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series E Convertible Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series E Convertible Preferred Stock into Common Stock.

12. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series E Convertible Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designation. The Corporation covenants to each holder of Series E Convertible Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series E Convertible Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series E Convertible Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series E Convertible Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

13. Notice. Whenever notice or other communication is required to be given hereunder, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series E Convertible Preferred Stock maintained by the Corporation as set forth in Section 16.

14. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series E Convertible Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

15. Transfer of Series E Convertible Preferred Stock. A Holder may assign some or all of the Series E Convertible Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

16. Series E Convertible Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series E Convertible Preferred Stock, in which the Corporation shall record the name, address and email address of the persons in whose name the Series E Convertible Preferred Stock have been issued, as well as the name, address and email address of each transferee. The Corporation may treat the person in whose name any Series E Convertible Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

17. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, this Certificate of Designation or otherwise with respect to the issuance of the Series E Convertible Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL and the applicable provisions hereof. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

18. General Provisions. In addition to the above provisions with respect to Series E Convertible Preferred Stock, such Series E Convertible Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Charter with respect to preferred stock of the Corporation generally.

19. Waiver and Amendment. Any of the rights, powers, preferences and other terms of the Series E Convertible Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series E Convertible Preferred Stock by the affirmative written consent or vote of the holders of at least 50 % of the shares of Series E Convertible Preferred Stock then outstanding.

signature page follows

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed by the undersigned this 12th day of November, 2018.

XPRESSPA GROUP, INC.

By: /s/ Edward Jankowski
Name: Edward Jankowski
Title: Chief Executive Officer

EXHIBIT A

XPRESSPA GROUP, INC.

The undersigned hereby elects to convert the number of shares of Series E Convertible Preferred Stock, par value $0.01 per share (the **"Series E Convertible Preferred Stock"),** of XpresSpa Group, Inc., a Delaware corporation (the **"Corporation"),** indicated below into shares of Common Stock, par value $0.01 per share (the **"Common Stock"),** of the Corporation, as of the date specified below.

Date of Conversion: _____

Number of shares of Series E Convertible Preferred Stock to be converted: _____

Stock certificate no(s). of Series E Convertible Preferred Stock to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Series E Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series E Convertible Preferred Stock are being converted in the following name and to the following address:

Issue to: _____

_____

Address: _____

Telephone Number: _____

Email address: _____

Authorization: _____

By: _____
Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

State of Delaware
Secretary of State
Division of Corporations
Delivered 08:01 AM 02/22/2019
FILED 08:01 AM 02/22/2019
SR 20191258217 - File Number 4090975

CERTIFICATE OF AMENDMENT

TO

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF XPRESSPA GROUP, INC.

Pursuant to Section 242 of the General Corporation Law of the State of Delaware, XpresSpa Group, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. The name of the Corporation is XpresSpa Group, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was January 9, 2006, under the name of Vringo, Inc. The name of the Corporation was changed to FORM Holdings Corp. by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware on May 6, 2016. The name of the Corporation was changed to XpresSpa Group, Inc. by filing a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware on January 5, 2018.

2. The Board of Directors of the Corporation has duly adopted a resolution pursuant to Section 242 of the General Corporation Law of the State of Delaware setting forth a proposed amendment to the Amended and Restated Certificate of Incorporation of the Corporation and declaring said amendment to be advisable. The requisite stockholders of the Corporation have duly approved said proposed amendment in accordance with Section 242 of the General Corporation Law of the State of Delaware. The amendment amends the Amended and Restated Certificate of Incorporation of the Corporation as follows:

Sections (3) and (4) of Article Fourth are hereby amended and restated in their entirety as follows:

(3) Upon effectiveness of this Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Corporation (the "Effective Time"), the shares of Common Stock issued and outstanding immediately prior to the Effective Time and the shares of Common Stock issued and held in the treasury of the Corporation immediately prior to the Effective Time are reclassified into a smaller number of shares such that each twenty (20) shares of issued Common Stock immediately prior to the Effective Time is reclassified into one (1) share of Common Stock. Notwithstanding the immediately preceding sentence, no fractional shares shall be issued as a result of the reverse stock split. Instead, any stockholder who would otherwise be entitled to a fractional share of our Common Stock as a result of the reclassification shall be entitled to receive a cash payment equal to the product of such resulting fractional interest in one share of our Common Stock multiplied by the closing trading price of our Common Stock on the trading day immediately preceding the effective date of the reverse stock split. Notwithstanding the foregoing, the Corporation shall not be obliged to issue certificates evidencing the shares of Common Stock outstanding as a result of the reverse stock split or cash in lieu of fractional shares, if any, unless and until the certificates evidencing the shares held by a holder prior to the reverse stock split are either delivered to the Corporation or its transfer agent, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates.

(4) Each stock certificate that, immediately prior to the Effective Time, represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent that the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified (as well as the right to receive a cash payment in lieu of a fractional share of Common Stock), provided, however, that each person of record holding a certificate that represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall receive, upon surrender of such certificate, a new certificate evidencing and representing the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified (including the right to receive a cash payment in lieu of a fractional share of Common Stock)."

This Certificate of Amendment shall be effective on February 22, 2019 at 5:00 p.m., Eastern Time.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its Chief Executive Officer on this 22nd day of February, 2019.

XPRESSPA GROUP, INC.

By: /s/ Douglas Satzman
Name: Douglas Satzman
Title: Chief Executive Officer

Exhibit 3.2

AMENDED AND RESTATED

BYLAWS OF

XPRESSPA GROUP, INC.

Adopted January 8, 2018

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BYLAWS

ARTICLE I — MEETINGS OF STOCKHOLDERS

1.1 ***Place of Meetings***. Meetings of stockholders of XpresSpa Group, Inc. (the "**Company**") shall be held at any place, within or outside the State of Delaware, determined by the Company's board of directors (the "**Board**"). The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "**DGCL**"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Company's principal executive office.

1.2 ***Annual Meeting***. An annual meeting of stockholders shall be held for the election of directors at such date and time as may be designated by resolution of the Board from time to time. Any other proper business may be transacted at the annual meeting. The Company shall not be required to hold an annual meeting of stockholders, *provided* that (i) the stockholders are permitted to act by written consent under the Company's certificate of incorporation and these bylaws, (ii) the stockholders take action by written consent to elect directors and (iii) the stockholders unanimously consent to such action or, if such consent is less than unanimous, all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

1.3 ***Special Meeting***. A special meeting of the stockholders may be called at any time by the Board, Chairperson of the Board, Chief Executive Officer or President (in the absence of a Chief Executive Officer) or by one or more stockholders holding shares in the aggregate entitled to cast not less than 10% of the votes at that meeting.

If any person(s) other than the Board calls a special meeting, the request shall:

(i) be in writing;

(ii) specify the time of such meeting and the general nature of the business proposed to be transacted; and

(iii) be delivered personally or sent by registered mail or by facsimile transmission to the Chairperson of the Board, the Chief Executive Officer, the President (in the absence of a Chief Executive Officer) or the Secretary of the Company.

The officer(s) receiving the request shall cause notice to be promptly given to the stockholders entitled to vote at such meeting, in accordance with these bylaws, that a meeting will be held at the time requested by the person or persons calling the meeting. No business may be transacted at such special meeting other than the business specified in such notice to stockholders. Nothing contained in this paragraph of this **section 1.3** shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board may be held.

1.4 ***Notice of Stockholders' Meetings***. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the written notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting.

1.5 ***Quorum***. Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, in the manner provided in **section 1.6**, until a quorum is present or represented.

1.6 ***Adjourned Meeting; Notice***. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

1.7 ***Conduct of Business***. Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in the absence of the foregoing persons by the Chief Executive Officer, or in the absence of the foregoing persons by the President, or in the absence of the foregoing persons by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting. The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business.

1.8 ***Voting***. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of **section 1.10** of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of capital stock held by such stockholder which has voting power upon the matter in question. Voting at meetings of stockholders need not be by written ballot and, unless otherwise required by law, need not be conducted by inspectors of election unless so determined by the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote thereon which are present in person or by proxy at such meeting. If authorized by the Board, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission (as defined in **section 7.2** of these bylaws), *provided* that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

Except as otherwise required by law, the certificate of incorporation or these bylaws, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

1.9 ***Stockholder Action by Written Consent Without a Meeting***. Unless otherwise provided in the certificate of incorporation, any action required by the DGCL to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

An electronic transmission (as defined in **section 7.2**) consenting to an action to be taken and transmitted by a stockholder or proxy holder, or by a person or persons authorized to act for a stockholder or proxy holder, shall be deemed to be written, signed and dated for purposes of this section, *provided* that any such electronic transmission sets forth or is delivered with information from which the Company can determine (i) that the electronic transmission was transmitted by the stockholder or proxy holder or by a person or persons authorized to act for the stockholder or proxy holder and (ii) the date on which such stockholder or proxy holder or authorized person or persons transmitted such electronic transmission.

In the event that the Board shall have instructed the officers of the Company to solicit the vote or written consent of the stockholders of the Company, an electronic transmission of a stockholder written consent given pursuant to such solicitation may be delivered to the Secretary or the President of the Company or to a person designated by the Secretary or the President. The Secretary or the President of the Company or a designee of the Secretary or the President shall cause any such written consent by electronic transmission to be reproduced in paper form and inserted into the corporate records.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Company as provided in Section 228 of the DGCL. In the event that the action which is consented to is such as would have required the filing of a certificate under any provision of the DGCL, if such action had been voted on by stockholders at a meeting thereof, the certificate filed under such provision shall state, in lieu of any statement required by such provision concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

1.10 ***Record Date for Stockholder Notice; Voting; Giving Consents***. In order that the Company may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date:

(i) in the case of determination of stockholders entitled to notice of or to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting;

(ii) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board; and

(iii) in the case of determination of stockholders for any other action, shall not be more than 60 days prior to such other action.

If no record date is fixed by the Board:

(i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held;

(ii) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company in accordance with applicable law, or, if prior action by the Board is required by law, shall be at the close of business on the day on which the Board adopts the resolution taking such prior action; and

(iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting, *provided* that the Board may fix a new record date for the adjourned meeting.

1.11 ***Proxies***. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

1.12 ***List of Stockholders Entitled to Vote***. The officer who has charge of the stock ledger of the Company shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Company shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten days prior to the meeting: (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Company's principal place of business. In the event that the Company determines to make the list available on an electronic network, the Company may take reasonable steps to ensure that such information is available only to stockholders of the Company. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

ARTICLE II — DIRECTORS

2.1 ***Powers***. The business and affairs of the Company shall be managed by or under the direction of the Board, except as may be otherwise provided in the DGCL or the certificate of incorporation.

2.2 ***Number of Directors***. The Board shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

2.3 ***Election, Qualification and Term of Office of Directors***. Except as provided in **section 2.4** of these bylaws, and subject to **sections 1.2** and **1.9** of these bylaws, directors shall be elected at each annual meeting of stockholders. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors. Each director shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation or removal.

2.4 ***Resignation and Vacancies***. Any director may resign at any time upon notice given in writing or by electronic transmission to the Company. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Company should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office and until such director's successor is elected and qualified, or until such director's earlier death, resignation or removal.

2.5 ***Place of Meetings; Meetings by Telephone***. The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

2.6 ***Conduct of Business***. Meetings of the Board shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

2.7 ***Regular Meetings***. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

2.8 ***Special Meetings; Notice***. Special meetings of the Board for any purpose or purposes may be called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, the Secretary or any two directors.

Notice of the time and place of special meetings shall be:

(i) delivered personally by hand, by courier or by telephone;

(ii) sent by United States first-class mail, postage prepaid;

(iii) sent by facsimile; or

(iv) sent by electronic mail,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Company's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the Company's principal executive office) nor the purpose of the meeting.

2.9 ***Quorum; Voting***. At all meetings of the Board, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

2.10 ***Board Action by Written Consent Without a Meeting***. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.11 ***Fees and Compensation of Directors***. Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation of directors.

2.12 ***Removal of Directors***. Unless otherwise restricted by statute, the certificate of incorporation or these bylaws, any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

ARTICLE III — COMMITTEES

3.1 ***Committees of Directors***. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Company. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Company.

3.2 ***Committee Minutes***. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

3.3 ***Meetings and Actions of Committees***. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(i) **section 2.5** (Place of Meetings; Meetings by Telephone);

(ii) **section 2.7** (Regular Meetings);

(iii) **section 2.8** (Special Meetings; Notice);

(iv) **section 2.9** (Quorum; Voting);

(v) **section 2.10** (Board Action by Written Consent Without a Meeting); and

(vi) **section 7.5** (Waiver of Notice)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. *However*:

(i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(ii) special meetings of committees may also be called by resolution of the Board; and

(iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

3.4 ***Subcommittees***. Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE IV — OFFICERS

4.1 ***Officers***. The officers of the Company shall be a President and a Secretary. The Company may also have, at the discretion of the Board, a Chairperson of the Board, a Vice Chairperson of the Board, a Chief Executive Officer, one or more Vice Presidents, a Chief Financial Officer, a Treasurer, one or more Assistant Treasurers, one or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

4.2 ***Appointment of Officers***. The Board shall appoint the officers of the Company, except such officers as may be appointed in accordance with the provisions of **section 4.3** of these bylaws.

4.3 ***Subordinate Officers***. The Board may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers and agents as the business of the Company may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

4.4 ***Removal and Resignation of Officers***. Any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Company. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

4.5 ***Vacancies in Offices***. Any vacancy occurring in any office of the Company shall be filled by the Board or as provided in **section 4.3**.

4.6 ***Representation of Shares of Other Corporations***. Unless otherwise directed by the Board, the President or any other person authorized by the Board or the President is authorized to vote, represent and exercise on behalf of the Company all rights incident to any and all shares of any other corporation or corporations standing in the name of the Company. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

4.7 ***Authority and Duties of Officers***. Except as otherwise provided in these bylaws, the officers of the Company shall have such powers and duties in the management of the Company as may be designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

ARTICLE V — INDEMNIFICATION

5.1 ***Indemnification of Directors and Officers in Third Party Proceedings***. Subject to the other provisions of this **Article V**, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") (other than an action by or in the right of the Company) by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

5.2 ***Indemnification of Directors and Officers in Actions by or in the Right of the Company***. Subject to the other provisions of this **Article V**, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

5.3 ***Successful Defense***. To the extent that a present or former director or officer of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding described in **section 5.1** or **section 5.2**, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

5.4 ***Indemnification of Others***. Subject to the other provisions of this **Article V**, the Company shall have power to indemnify its employees and agents to the extent not prohibited by the DGCL or other applicable law. The Board shall have the power to delegate to such person or persons the determination of whether employees or agents shall be indemnified.

5.5 ***Advanced Payment of Expenses***. Expenses (including attorneys' fees) incurred by an officer or director of the Company in defending any Proceeding shall be paid by the Company in advance of the final disposition of such Proceeding upon receipt of an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this **Article V** or the DGCL. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Company deems appropriate.

Notwithstanding the foregoing, unless otherwise determined pursuant to **section 5.8**, no advance shall be made by the Company to an officer of the Company (except by reason of the fact that such officer is or was a director of the Company, in which event this paragraph shall not apply) in any Proceeding if a determination is reasonably and promptly made (i) by a majority vote of the directors who are not parties to such Proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, that facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Company.

5.6 ***Limitation on Indemnification and Advancement of Expenses***. Subject to the requirements in **section 5.3** and the DGCL, the Company shall not be required to provide indemnification or, with respect to clauses (i), (iii) and (iv) below, advance expenses to any person pursuant to this **Article V**:

(i) in connection with any Proceeding (or part thereof) initiated by such person except (i) as otherwise required by law, (ii) in specific cases if the Proceeding was authorized by the Board, or (iii) as is required to be made under **section 5.7**;

(ii) in connection with any Proceeding (or part thereof) against such person providing for an accounting or disgorgement of profits pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of any federal, state or local statutory law or common law;

(iii) for amounts for which payment has actually been made to or on behalf of such person under any statute, insurance policy or indemnity provision, except with respect to any excess beyond the amount paid; or

(iv) if prohibited by applicable law.

5.7 ***Determination; Claim***. If a claim for indemnification or advancement of expenses under this **Article V** is not paid in full within 60 days after a written claim therefor has been received by the Company, the claimant may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such suit, the Company shall have the burden of proving that the claimant was not entitled to the requested indemnification or advancement of expenses under applicable law.

5.8 ***Non-Exclusivity of Rights***. The indemnification and advancement of expenses provided by, or granted pursuant to, this **Article V** shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The Company is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

5.9 ***Insurance***. The Company may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of the DGCL.

5.10 ***Survival***. The rights to indemnification and advancement of expenses conferred by this **Article V** shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

5.11 ***Effect of Repeal or Modification***. Any repeal or modification of this **Article V** shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

5.12 ***Certain Definitions***. For purposes of this **Article V**, references to the "**Company**" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this **Article V** with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this **Article V**, references to "**other enterprises**" shall include employee benefit plans; references to "**fines**" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "**serving at the request of the Company**" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this **Article V**.

ARTICLE VI — STOCK

6.1 ***Stock Certificates; Partly Paid Shares***. The shares of the Company shall be represented by certificates, *provided* that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Company by the Chairperson of the Board or Vice-Chairperson of the Board, or the President or a Vice-President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Company representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Company shall not have power to issue a certificate in bearer form.

The Company may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Company in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Company shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

6.2 ***Special Designation on Certificates***. If the Company is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Company shall issue to represent such class or series of stock; *provided* that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Company shall issue to represent such class or series of stock a statement that the Company will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

6.3 ***Lost Certificates***. Except as provided in this **section 6.3**, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Company and cancelled at the same time. The Company may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Company may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 ***Dividends***. The Board, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the Company's capital stock. Dividends may be paid in cash, in property, or in shares of the Company's capital stock, subject to the provisions of the certificate of incorporation.

The Board may set apart out of any of the funds of the Company available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

6.5 ***Stock Transfer Agreements***. The Company shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Company to restrict the transfer of shares of stock of the Company of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.6 ***Registered Stockholders***. The Company:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;

(ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and

(iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

6.7 ***Transfers***. Transfers of record of shares of stock of the Company shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer.

ARTICLE VII — MANNER OF GIVING NOTICE AND WAIVER

7.1 ***Notice of Stockholder Meetings***. Notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the Company's records. An affidavit of the Secretary or an Assistant Secretary of the Company or of the transfer agent or other agent of the Company that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

7.2 ***Notice by Electronic Transmission***. Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the Company under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any such consent shall be deemed revoked if:

(i) the Company is unable to deliver by electronic transmission two consecutive notices given by the Company in accordance with such consent; and

(ii) such inability becomes known to the Secretary or an Assistant Secretary of the Company or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Company that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

An "**electronic transmission**" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

7.3 ***Notice to Stockholders Sharing an Address***. Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within 60 days of having been given written notice by the Company of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

7.4 ***Notice to Person with Whom Communication is Unlawful***. Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

7.5 ***Waiver of Notice***. Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII

[Intentionally omitted.]

ARTICLE IX — GENERAL MATTERS

9.1 ***Fiscal Year***. The fiscal year of the Company shall be fixed by resolution of the Board and may be changed by the Board.

9.2 ***Seal***. The Company may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Company may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

9.3 ***Annual Report***. The Company shall cause an annual report to be sent to the stockholders of the Company to the extent required by applicable law. If and so long as there are fewer than 100 holders of record of the Company's shares, the requirement of sending an annual report to the stockholders of the Company is expressly waived (to the extent permitted under applicable law).

9.4 ***Construction; Definitions***. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

ARTICLE X — AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote. However, the Company may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the Board.

Exhibit 10.28

PRODUCT SALE AND MARKETING AGREEMENT

THIS PRODUCT SALE AND MARKETING AGREEMENT (this "**Agreement**") is made this 12th day of November, 2018 (the "**Effective Date**"), by and between Calm.com, Inc., a Delaware corporation, having offices at 140 2nd Street, 3rd Floor, San Francisco, California 94105 ("**Calm**") and XpresSpa Group, Inc., a Delaware corporation, having offices at 780 Third Avenue, 12th Floor, New York, New York 10017 ("**XSPA**"). Each of Calm and XSPA may be referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, Calm is the manufacturer and distributor of Calm branded products and services, including those set forth on Exhibit A (the "**Products**");

WHEREAS, XSPA is the owner, operator and/or franchisor of XpresSpa branded stores (each a "**Store**") throughout the United States of America (the "**Territory**");

WHEREAS, Calm desires to increase its brand exposure in the Territory by collaborating with XSPA for the display, marketing, promotion, offer for sale and sale of Products at each Store in the Territory; and

WHEREAS, XSPA desires to collaborate with Calm in connection with the display, marketing, promotion, offer for sale and sale of Products at each Store in the Territory in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. *Term*. Unless this Agreement is terminated earlier in accordance with the terms of Section 12, the term of this Agreement shall commence on the Effective Date and shall continue until July 31, 2019 (the "**Initial Term**"). Following the Initial Term, this Agreement shall automatically renew for successive terms of six (6) months (each a "**Renewal Term**", and together with the Initial Term, the "**Term**") unless written notice is given by either Party no later than thirty (30) days in advance of the expiration of the Initial Term or the applicable Renewal Term.

2. *Sale of Products.*

2.01. XSPA shall use its commercially reasonable efforts to display, market, promote, offer for sale and sell the Products set forth on Exhibit A in all Stores throughout the Territory. The Products shall only be sold by XSPA at the retail price of the applicable Product as set forth on Exhibit A (the "**Retail Price**"). For the avoidance of doubt, the Retail Price for the Products at the Stores in the Territory (i) may only be modified by mutual agreement of the Parties, and (ii) does not include any discounts, promotions or applicable sales taxes.

2.02. In addition to the Products, Calm shall have the right to identify up to five (5) additional products, with such products and the price thereof to be mutually agreed by the Parties, to be displayed, marketed, promoted, offered for sale and sold in the Stores in the Territory. Such products, once agreed on by both Parties and priced in accordance with the previous sentence, shall be deemed Products set forth on Exhibit A for the purposes of this Agreement.

3. *Exclusivity and Right of First Refusal*

3.01. Throughout the Term and for a period of six (6) months after the expiration or termination of this Agreement, neither XSPA nor any of its affiliates shall, directly or indirectly, sell, offer for sale, market or promote any digital meditation or digital sleep products (other than the Products), including online or in any Store in the Territory, without the express prior written consent of Calm.

3.02. Throughout the Term and for a period of six (6) months after the expiration or termination of this Agreement, neither Calm nor any of its affiliates shall, directly or indirectly, sell, offer for sale, market or promote any digital meditation or digital sleep products in any retail location located in an airport other than in collaboration with XSPA, without the express prior written consent of XSPA.

3.03. Throughout the Term and for a period of six (6) months after the expiration or termination of this Agreement, Calm shall have a right of first refusal to expand the rights and obligations described in this Agreement to any Stores outside the Territory (the "**ROFR**"). XSPA shall give prompt written notice to Calm each time it offers, proposes to offer, or has received an offer to enter into any agreement or arrangement under which XSPA or any of its affiliates would sell, offer for sale, market, promote or undertake any similar action with respect to any meditation or sleep digital products or similar products at any Store outside the Territory (each, a "**ROFR Notice**"). Calm shall have thirty (30) business days (the "**ROFR Period**") from receipt of a ROFR Notice to exercise its ROFR with respect to the region and/or Stores described in the ROFR Notice. If Calm exercises its ROFR within the ROFR Period, the Parties shall enter into an amendment or addendum to this Agreement to include such additional region and/or Stores. If Calm does not exercise its ROFR within the ROFR Period, XSPA may enter into such agreement or arrangement with respect to the applicable region and/or Stores set forth in the ROFR Notice with any third party; *provided* that, such agreement or arrangement are on the same terms offered to Calm (it being understood that in the event XSPA modifies such terms, XSPA shall provide a new ROFR Notice to Calm in accordance with this Section 3.02).

4. *Marketing, Signage and Displays*.

4.01. With respect to each Store in the Territory, XSPA shall use commercially reasonable efforts to:

(a) promptly after the Effective Date, (i) prepare notices and consents and take all other actions reasonably necessary to obtain and maintain approval as necessary for bulkhead signage from airport regulatory authorities or other entities whose approval is required for such Store and install such bulkhead signage as soon as practicable thereafter, and (ii) once installed, maintain such bulkhead signage throughout the Term;

(b) allocate at least the retail space for the display of the Products in Stores as set forth on Exhibit B;

(c) cause any and all XSPA employees working in such Store to wear uniforms co-branded with Calm's and XSPA's Marks (as defined herein), including shirts and lanyards (such uniform, which will be jointly designed by and mutually acceptable to the Parties, the "**Uniforms**") during normal working hours;

(d) display Calm branded marketing materials in such Store (which marketing materials shall be highly visible beyond the lease line as determined in Calm's sole discretion), including the items set forth on Exhibit C;

(e) distribute free of charge as free gifts with purchase certain Calm branded gift products (the "**Gifts**"), as mutually selected by Calm and XSPA;

(f) distribute free trial or discount inserts for Calm digital product subscriptions (the "**Inserts**") to customers of such Store (it being understood that such Inserts shall contain a unique promotional code enabling Calm to attribute purchases to such Store); and

(g) use and distribute to any purchaser of any Product sold at the Stores shopping bag(s) co-branded with Calm's and XSPA's Marks (the "**Shopping Bags**"). Calm will collaborate with XSPA on the design of Shopping Bags and such design shall be mutually agreed by the Parties.

4.02. Calm and XSPA shall jointly market their activities under this Agreement to their respective user bases, including by: (a) sending at least two (2) emails to each of their respective email marketing lists during the Initial Term that concern one or more of the Products, (b) making at least four (4) posts across each of their respective social media channels during the Initial Term that concern one or more of the Products and (c) marketing their activities concerning one or more of the Products under this Agreement on each of their respective websites throughout the Term. All such emails, co-branded communications and marketing materials are subject to the prior written approval of the Parties.

5. *Store Operations*.

5.01. With respect to any and all Stores owned or operated by XSPA, as between Calm and XSPA, XSPA shall be the sole owner and operator of any and all such Stores throughout the Territory and XSPA shall have sole management and operational control and liability with respect to such Stores and any and all costs and expense associated with the operation and maintenance thereof. XSPA shall operate and maintain the Stores with high standards of quality and service and shall at all times comply with any and all applicable laws in connection therewith.

5.02. With respect to any and all Stores owned or operated by any of XSPA's Airport Concession Disadvantaged Business Enterprise partners ("**ACDBE Partner(s)**") in conjunction with XSPA, XSPA shall cause each of its ACDBE Partners to fulfill all of the obligations set forth herein with respect to the display, marketing, promotion, offer for sale and sale of Products at each Store in the Territory owned or operated by XSPA and such ACDBE Partner(s). As between Calm and XSPA, XSPA shall remain liable for the acts and omissions of each ACDBE Partner. As between Calm on the one hand and XSPA and its ACDBE Partner(s) on the other hand, XSPA and its ACDBE Partner(s) shall be the sole owners and operators of any and all such Stores throughout the Territory and XSPA and its ACDBE Partner(s) shall have sole management and operational control and liability with respect to such Stores and any and all costs and expense associated with the operation and maintenance thereof. XSPA and its ACDBE Partner(s) shall operate and maintain the Stores with high standards of quality and service and shall at all times comply with any and all applicable laws in connection therewith.

5.03. With respect to any and all Stores owned or operated by a third party who is not an ACDBE Partner (any such third party a "**Franchisee**"), where XSPA is a franchisor, XSPA shall cause each Franchisee to fulfill all of the obligations set forth herein with respect to the display, marketing, promotion, offer for sale and sale of Products at each Store in the Territory owned or operated by such Franchisee. Except as otherwise set forth in this Agreement, including Section 10.03, as between Calm and XSPA, XSPA shall remain liable for the acts and omissions of each Franchisee.

5.04. Calm shall have the right, but not the obligation, to hire personnel of its choosing to be present in any Store(s) to assist in the display, marketing, promotion, offer for sale and sale of Products, provided, however, that no more than one such person shall be present at any one time in any store without the prior written consent of XSPA. XSPA shall permit such personnel access to each Store and the ability to assist in the marketing, promotion and sale of the Products. For the avoidance of doubt, as between the Parties, Calm shall remain responsible for any and all employee compensation or other benefits with respect to any such personnel.

5.05. Calm or its authorized designees shall be the sole suppliers to XSPA of XSPA's requirements for Products, Gifts, Shopping Bags, Uniforms and Inserts (collectively, "**Product Collateral**") for each Store throughout the Territory. Calm shall use reasonable efforts to fulfill all of XSPA's requirements for Product Collateral in accordance with the terms and conditions of this Agreement. In the event that inventory of any Product Collateral in any Store falls below fifty percent (50%) of the initial amount of such Product Collateral provided to such Store, XSPA shall use best efforts to advise Calm in sufficient detail to enable Calm to ship additional inventory of such Product Collateral to such Store. The Parties acknowledge and agree that, as between the Parties, Calm shall retain legal title to any and all Product Collateral (other than Uniforms) until sold in a Store in the Territory or otherwise disbursed in a Store in the Territory (in the case of Gifts, Inserts and Shopping Bags) in accordance with the terms and conditions of this Agreement. In the event Calm identifies any issue with any Product Collateral making it unsuitable for use as contemplated by this Agreement or issues a recall with respect to any Product, XSPA shall promptly return any and all affected Product Collateral to Calm or its authorized designees upon receiving notice of such issue or recall.

6. *Training*. XSPA shall provide training to any and all employees in each Store throughout the Territory regarding the display, marketing, promotion, offer for sale and sale of Products based on training materials (including PDF documents and/or instruction videos) provided by Calm. At XSPA's request, Calm shall provide training to XSPA area managers and select store managers at times and locations mutually agreed upon by the Parties regarding the display, marketing, promotion, offer for sale and sale of Products.

7. *Collaborative Efforts.*

7.01. XSPA and Calm shall jointly consult and work together in good faith throughout the Term to develop and execute a plan for the marketing, promotion and sale of Products in all Stores throughout the Territory, including with respect to Product layout and display, in-store marketing and promotional activities, the design of any co-branded Product Collateral or other marketing materials, and bulkhead signage at the Stores, in each case, taking into account any plan restrictions on the Store that may be imposed by an airport regulatory authority or other entity and all applicable laws.

7.02. Any Product Collateral item or other marketing material co-branded with Calm's and XSPA's Marks shall be subject to each Party's prior review and approval, which shall not be unreasonably withheld.

8. *Payments*.

8.01. XSPA shall pay to Calm on a monthly basis an amount equal to (i) fifty percent (50%) of the Retail Price for all Products sold in the Stores in the Territory during the applicable month *minus* (ii) fifty percent (50%) of any commission actually paid or payable to XSPA employee(s) or contractor(s) attributable to sales of such Products during such month; *provided* that in no event shall such commission be greater than fifteen percent (15%) of the Retail Price for the applicable Product.

8.02. Calm shall pay to XSPA on a monthly basis a retail commission of $20.00 for each sale of Calm digital product subscriptions (excluding, for the avoidance of doubt, any free trial subscriptions) that result from XSPA's distribution of Inserts and a customer's use of the unique promotional discount code set forth therein in accordance with the terms and conditions set forth herein (it being understood that XSPA shall ensure fifty percent (50%) of each such commission shall be distributed to the applicable Store's retail employees or contractors via a pool or other format as mutually agreed to by the Parties).

Calm shall prepare and maintain complete and accurate books and records covering all transactions relating to this Agreement. XSPA's representatives may, from time to time during regular business hours on reasonable advance notice, during the Term of this Agreement and for a period of six (6) months thereafter, inspect and audit such books and records and examine and copy all other documents and material in the possession or under the control of Calm with respect to the subject matter and the terms of this Agreement.

After completion of any inspection or audit pursuant to this Section 8.02, XSPA shall notify Calm of the results of such inspection and audit (the "**Calm Audit Results**"). Upon receipt of such information, Calm shall have thirty (30) days (the "**Calm Review Period**") to review the Calm Audit Results.

On or prior to the last day of the Calm Review Period, Calm may object to the Calm Audit Results by delivering to XSPA a written statement setting forth its objections in reasonable detail, indicating each disputed item or amount and the basis for its disagreement therewith (the "**Calm Statement of Objections**"). If Calm fails to deliver the Calm Statement of Objections before the expiration of the Calm Review Period, the Calm Audit Results shall be deemed to have been accepted by Calm. If Calm delivers the Calm Statement of Objections before the expiration of the Calm Review Period, Calm and XSPA shall negotiate in good faith to resolve such objections within thirty (30) days after the delivery of the Calm Statement of Objections (the "**Calm Resolution Period**"), and, if the same are so resolved within the Calm Resolution Period, the Calm Audit Results with such changes as may have been previously agreed in writing by Calm and XSPA, shall be final and binding.

If Calm and XSPA fail to reach an agreement with respect to all of the matters set forth in the Calm Statement of Objections before expiration of the Calm Resolution Period, then any amounts remaining in dispute ("**Calm Disputed Amounts**" and any amounts not so disputed, the "**Calm Undisputed Amounts**") shall be submitted for resolution to the office of an impartial nationally recognized firm of independent certified public accountants mutually agreeable to Calm and XSPA (each acting reasonably and in good faith) (the "**Independent Accountant**") who, acting as experts and not arbitrators, shall resolve the Calm Disputed Amounts only and make any adjustments to the Calm Audit Results. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Calm Disputed Amount must be within the range of values assigned to each such item in the Calm Audit Results and the Calm Statement of Objections, respectively.

The Independent Accountant shall make a determination as soon as practicable within thirty (30) days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Calm Disputed Amounts and their adjustments to the Calm Audit Results shall be conclusive and binding upon the parties hereto.

If it is conclusively determined that any of Calm's payments due hereunder was less than the amount that should have been paid or any of XSPA's payments or reimbursements was more than the amount that should have been paid, all payments required to be made to eliminate the discrepancy, plus interest, shall be made promptly upon XSPA's demand, and, if the discrepancy in amounts due to XSPA is greater than ten percent (10%) or more of the amount due during the period in question, Calm promptly shall reimburse XSPA for the reasonable costs and expenses related to such inspection and audit not to exceed $5,000.00. In all other cases, XSPA shall be responsible for any and all costs and expenses related to such inspection and audit pursuant to this Section 8.02.

If it is conclusively determined that any of Calm's payments due hereunder was more than the amount that should have been paid or any of XSPA's payments or reimbursements was less than the amount that should have been paid, all payments required to be made to eliminate the discrepancy, plus interest, shall be made promptly upon Calm's demand.

8.03. Subject to the terms and conditions set forth herein, and considering that Calm or its authorized designees shall be the sole supplier of Product Collateral under Section 5.04 of this Agreement, Calm shall pay (or reimburse XSPA upon receipt of payment to a third party) for all costs associated with (a) the design, manufacture, shipping, distribution and installation, as applicable, of Product Collateral and other marketing materials and bulkhead signage as set forth in Section 4.01, (b) the creation of training materials and the costs associated with training (excluding cost of labor for any XSPA employee) pursuant to Section 6, (c) obtaining and maintaining approval of, and the creation, installation, maintenance and removal of any bulkhead signage advertising pursuant to Section 4.01(a), and (d) the design, manufacture, shipping and installation of in-store marketing changes to any Store.

Notwithstanding anything in this Agreement to the contrary, Calm shall not be obligated to reimburse XSPA for any such costs described in the previous sentence of this Section 8.03 incurred by XSPA above $500.00 unless Calm has provided prior written approval of such cost (including via email).

8.04. All payments required of XSPA hereunder shall be made to Calm in United States Dollars via wire transfers, or in such other manner as Calm shall designate, as follows:

Account Name	Calm.com, Inc.
Account Address	140 2nd St. FL3 San Francisco, CA 94105
Account #	3302444451
Bank Name	SIL VLY BK SJ
Bank Address	3003 TASMAN DRIVE, SANTA CLARA, CA 95054
Fed ABA	121140399

8.05. All payments required of Calm hereunder shall be made to XSPA in United States Dollars via wire transfers, ACH payment, or in such other manner as XSPA shall designate, as follows:

Account Name	XpresSpa Group, Inc.
Account #	483044863901
Bank Name	Bank of America
Bank Address	One Bryant Park New York, NY 10036
Fed ABA	026009593

8.06. With respect to Products sold in Stores in the Territory, XSPA shall deliver to Calm within twenty (20) days after each calendar month, a statement ("**Monthly Statement**") identifying (i) the total sales of each Product during said calendar month and (ii) the total commission paid to XSPA employees or contractors under Section 8.02, which shall include a breakdown by each individual Product and Store. Each Monthly Statement shall be fully completed and signed and certified as accurate by one of XSPA's senior officers.

8.07. XSPA shall prepare and maintain complete and accurate books and records covering all transactions relating to this Agreement. Calm's representatives may, from time to time during regular business hours on reasonable advance notice, during the Term of this Agreement and for a period of six (6) months thereafter, inspect and audit such books and records and examine and copy all other documents and material in the possession or under the control of XSPA with respect to the subject matter and the terms of this Agreement.

After completion of any inspection or audit pursuant to this Section 8.07, Calm shall notify XSPA of the results of such inspection and audit (the "**XSPA Audit Results**"). Upon receipt of such information, XSPA shall have thirty (30) days (the "**XSPA Review Period**") to review the XSPA Audit Results.

On or prior to the last day of the XSPA Review Period, XSPA may object to the XSPA Audit Results by delivering to Calm a written statement setting forth its objections in reasonable detail, indicating each disputed item or amount and the basis for its disagreement therewith (the "**XSPA Statement of Objections**"). If XSPA fails to deliver the XSPA Statement of Objections before the expiration of the XSPA Review Period, the XSPA Audit Results shall be deemed to have been accepted by XSPA. If XSPA delivers the XSPA Statement of Objections before the expiration of the XSPA Review Period, XSPA and Calm shall negotiate in good faith to resolve such objections within thirty (30) days after the delivery of the XSPA Statement of Objections (the "**XSPA Resolution Period**"), and, if the same are so resolved within the XSPA Resolution Period, the XSPA Audit Results with such changes as may have been previously agreed in writing by XSPA and Calm, shall be final and binding.

If Calm and XSPA fail to reach an agreement with respect to all of the matters set forth in the XSPA Statement of Objections before expiration of the XSPA Resolution Period, then any amounts remaining in dispute ("**XSPA Disputed Amounts**" and any amounts not so disputed, the "**XSPA Undisputed Amounts**") shall be submitted for resolution to the Independent Accountant who, acting as experts and not arbitrators, shall resolve the XSPA Disputed Amounts only and make any adjustments to the XSPA Audit Results. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each XSPA Disputed Amount must be within the range of values assigned to each such item in the XSPA Audit Results and the XSPA Statement of Objections, respectively.

The Independent Accountant shall make a determination as soon as practicable within thirty (30) days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the XSPA Disputed Amounts and their adjustments to the XSPA Audit Results shall be conclusive and binding upon the parties hereto.

If it is conclusively determined that any of XSPA's payments due hereunder was less than the amount that should have been paid or any of Calm's payments or reimbursements was more than the amount that should have been paid, all payments required to be made to eliminate the discrepancy, plus interest, shall be made promptly upon Calm's demand, and, if the discrepancy in amounts due to Calm is greater than ten percent (10%) or more of the amount due during the period in question, XSPA promptly shall reimburse Calm for the reasonable costs and expenses related to such inspection and audit not to exceed $5,000.00. In all other cases, Calm shall be responsible for any and all costs and expenses related to such inspection and audit pursuant to this Section 8.02.

If it is conclusively determined that any of XSPA's payments due hereunder was more than the amount that should have been paid or any of Calm's payments or reimbursements was less than the amount that should have been paid, all payments required to be made to eliminate the discrepancy, plus interest, shall be made promptly upon XSPA's demand.

9. *Intellectual Property Matters.*

9.01. Subject to the terms and conditions of this Agreement, Calm hereby grants to XSPA, solely during the Term and in the Territory, a revocable (as set forth in Section 12.04), royalty-free, assignable (solely as set forth in Section 16.05), non-sublicensable (except as set forth in Section 9.03), non-exclusive license to use the marks set forth on Exhibit D ("**Calm's Marks**"), solely to the extent necessary for XSPA to exercise its rights or perform its obligations set forth in this Agreement.

9.02. Subject to the terms and conditions of this Agreement, XSPA hereby grants to Calm, solely during the Term and in the Territory, a revocable (as set forth in Section 12.04), royalty-free, assignable (solely as set forth in Section 16.05), non-sublicensable (except as set forth in Section 9.03), non-exclusive license to use the marks set forth on Exhibit E ("**XSPA's Marks**", and together with Calm's Marks, the "**Marks**"), solely to the extent necessary for Calm to exercise its rights or perform its obligations set forth in this Agreement.

9.03. Each Party may sublicense the rights granted to such Party under Sections 9.01 and 9.02 of this Agreement to any third party vendor, supplier or manufacturer of Product Collateral solely to the extent necessary for such Party to exercise its rights or perform its obligations set forth in this Agreement.

9.04. Neither Party shall use the other Party's Marks, in whole or in part, as a corporate name, trade name or domain name and shall not use the other Party's Marks in combination with any other mark, design or designation except pursuant to the terms of this Agreement. Each Party shall use the other Party's Marks in the Territory strictly in compliance with all applicable legal requirements of the Territory. Each Party acknowledges and agrees that, as between the Parties, the other Party is the sole and exclusive owner of the Marks licensed by such other Party pursuant to this Section 9 and all goodwill associated therewith. Neither Party shall do or cause to be done any act or thing that may in any way adversely affect any rights of the other Party in and to such other Party's Marks or any registrations thereof or that, directly or indirectly, may reduce the value of such Marks or detract from any Mark's reputation, including challenging the ownership, validity or enforceability of such Marks. Each Party agrees that it will display the trademark registration symbol ® or the designations "SM" or "TM" adjacent to the Marks when directed to do so by the Party owning the relevant Mark and, when circumstances reasonably permit, it will cause a notice of ownership to appear on advertisements or in store displays bearing the Marks. Each Party will take care to display the other Party's Marks in a manner that does not bring the other Party's brand into disrepute.

9.05. All goodwill associated with the use of a Party's Marks by the other Party shall inure to the sole and exclusive benefit of the Party which owns such Mark. Each Party shall execute any documents and take any actions reasonably required by the other Party to confirm such Party's ownership of all rights in and to such Party's Marks in the Territory and the respective rights of the Parties pursuant to this Agreement.

9.06. In the event that either Party learns of any infringement, imitation or counterfeiting of the other Party's Marks or Products or of any use by any person of a trademark similar to such Marks, it shall promptly notify the other Party thereof. Thereupon, the Party owning the relevant Marks, or in the case of Products, Calm, shall take such action as it deems advisable for the protection of its rights in and to its Marks and Products and, if reasonably requested to do so by such Party, the other Party shall reasonably cooperate in all respects (at the sole costs and expense of the Party owning the relevant Marks, or in the case of Products, Calm), including by choosing to be a plaintiff or co-plaintiff and/or by causing its officers to execute pleadings and other necessary documents. Any action contemplated by this Section 9.06 shall be controlled by the Party with ownership of the relevant Marks, or in the case of Products, Calm.

9.07. Any intellectual property or moral right in any Product Collateral or other marketing materials concerning Calm or one or more Products, including patterns, sketches, logos, designs, packaging, labels, tags, advertising materials or the like ("**Product Collateral IP**") bearing Calm's Marks shall be, as between the Parties, the sole and exclusive property of Calm, it being understood that XSPA shall retain sole and exclusive ownership of its Marks, including with respect to co-branded Product Collateral and any other co-branded marketing materials concerning Calm or one or more Products. Any co-branded Product Collateral IP shall be used solely (i) in the Stores in the Territory or (ii) in connection with digital marketing activities by Calm with respect to Calm or one or more Products, in accordance with the terms and conditions set forth in this Agreement. If any Product Collateral IP (or any aspect thereof) are not designed and/or created by Calm, such Product Collateral IP (or aspect thereof) shall be deemed "works made for hire" for Calm within the meaning of the U.S. Copyright Law and/or other applicable comparable laws or, if they do not so qualify, all ownership rights thereto shall be, and are hereby, assigned to Calm. XSPA shall not, directly or indirectly, do or suffer to be done any act or thing which may affect adversely any of Calm's rights in the Product Collateral IP, including filing any application in its name to record any claims to Product Collateral IP (or any aspect thereof). XSPA shall execute any documents and take any actions reasonably required by Calm to confirm Calm's ownership of all rights in and to such Product Collateral IP.

10. *Agency, Indemnification and Insurance*.

10.01. Calm and XSPA are each independent contractors. The Parties are not and shall not be considered as joint venturers, partners or agents of each other. Neither Party shall have the authority to bind or obligate the other Party.

10.02. XSPA hereby agrees to indemnify and hold harmless Calm and its affiliates and their respective directors, officers, employees and agents from and against any and all claims, suits, alleged regulatory violations, losses, damages and costs (including reasonable attorneys' fees) arising out of or relating to (i) any alleged action or failure to take action by XSPA in connection with the operation or maintenance of the Stores or provision of any product or service (other than the Products), including but not limited to: violations of applicable law, regulations or other rules; defects in XSPA sourced products or services provided or obtained therein; employment and labor issues with respect to XSPA employees; any product liability or personal injury claims with respect to XSPA's provision of any product or service (other than the Products); property damage; and collection, remittance or payment of any taxes, license fees or any other payment due to any party; (ii) the use of XSPA's Marks by Calm as authorized by this Agreement; and (iii) any breach of any covenant or agreement of XSPA contained in this Agreement.

10.03. Calm hereby agrees to indemnify and hold harmless XSPA and its affiliates and their respective directors, officers, employees and agents from and against any and all claims, suits, alleged regulatory violations, losses, damages and costs (including reasonable attorneys' fees) arising out of or relating to (i) any product liability or personal injury claims with respect to any Products or Product Collateral or any alleged defects in any Products or Product Collateral; (ii) any alleged action or failure to take action by Calm's employees; (iii) the use of Calm's Marks by XSPA as authorized by this Agreement; and (iv) any breach of any covenant or agreement of Calm contained in this Agreement.

10.04. In the event any claim, action, suit or proceeding (each, a "**Claim**") is brought or made against an indemnified Party for which defense and indemnification by the indemnifying Party may be sought hereunder, the indemnified Party will promptly notify the indemnifying Party of the commencement thereof, and the indemnified Party will be entitled to reasonably participate in (but not assume) the defense thereof. Notwithstanding any other provision of this Agreement, the indemnifying Party shall not enter into any settlement of any Claim without the prior written consent of the indemnified Party, except as provided in this Section 10.04. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the indemnified Party and provides, in customary form, for the unconditional release of each indemnified Party from all liabilities and obligations in connection with such Claim and the indemnifying Party desires to accept and agree to such offer, the indemnifying Party shall give written notice to that effect to the indemnified Party. If the indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the indemnified Party may continue to contest or defend such Claim and in such event, the maximum liability of the indemnifying Party as to such Claim shall not exceed the amount of such settlement offer. If the indemnified Party fails to consent to such firm offer and also fails to assume defense of such Claim, the indemnifying Party may settle the Claim upon the terms set forth in such firm offer to settle such Claim.

10.05. XSPA shall obtain, and thereafter maintain during the Term, the following insurance:

(a) Special form property policy covering all stock on premises of the Store, including with respect to all Product Collateral;

(b) Workers' Compensation Insurance in the statutorily required amount (or XSPA shall participate in the appropriate state fund if such insurance is not available or allowed), together with Employer's Liability Insurance with a limit of $1,000,000 for each accident; and

(c) Commercial General Liability insurance, (including fire liability, contractual liability, personal injury, product liability and completed operations coverage) in the amount of not less than $3,000,000 combined single limit with umbrella liability coverage with a limit of not less than $10,000,000;

The foregoing insurance policies shall name XSPA as the insured and Calm as additional insured (except for Workers' Compensation Insurance). If any such insurance is on a "claims made" basis, XSPA shall maintain coverage thereunder for a period of at least two (2) years following the termination of this Agreement. With respect to the foregoing, XSPA shall provide to Calm certificate(s) evidencing such insurance prior to or upon execution of this Agreement. The certificates shall provide that Calm will be given at least thirty (30) days prior written notice of cancellation or any material change in these policies. Calm shall have no obligation to XSPA for the costs of insurance required, or for any other coverage that XSPA obtains, directly or indirectly for its own account. In no event shall any insurer have a Best's Insurance rating of less than (A-) of class size VII.

10.06. EXCEPT WITH RESPECT TO EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, (A) UNDER NO CIRCUMSTANCE AND UNDER NO LEGAL THEORY (TORT, CONTRACT, OR OTHERWISE), SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF OPPORTUNITY OR OTHER SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES SUFFERED BY THE OTHER PARTY ARISING IN CONNECTION WITH THIS AGREEMENT; AND (B) THE MAXIMUM LIABILITY OF EACH PARTY IN ANY WAY RELATED TO THIS AGREEMENT SHALL NOT EXCEED $2,000,000.00 (EXCLUDING ANY AMOUNTS DUE AND PAYABLE PURSUANT TO SECTION 8 HEREUNDER).

11. *Representations and Warranties*.

11.01. Calm represents and warrants that:

(a) it has the legal power and authority to enter into this Agreement and to grant the rights to its Marks granted hereunder, and the execution and performance of this agreement does not violate or put Calm in default of any other agreement, order or judgment by which it is bound or to which it is subject;

(b) Calm's Marks do not infringe any third parties' rights and that the Marks were not misappropriated from any third party;

(c) it is aware of and will comply with all federal, state and local laws and regulations governing the Products and the Product Collateral in the Territory; and

(d) it is the sole and exclusive owner of Calm's Marks.

11.02. XSPA represents and warrants that:

(a) it has the legal power and authority to enter into this Agreement and to grant the rights to its Marks granted hereunder, and the execution and performance of this Agreement does not violate or put XSPA in default of any other agreement, order or judgment by which it is bound or to which it is subject: and

(b) it is aware of and will comply with all federal, state and local laws and regulations governing its operation of the Stores in the Territory;

(c) XSPA's Marks do not infringe any third parties' rights and that the Marks were not misappropriated from any third party, and

(d) it is the sole and exclusive owner of XSPA's Marks.

12. *Termination*.

12.01. This Agreement may be terminated by either Party, prior to its expiration, by reason of a material breach of the terms and conditions hereof; provided that the Party alleged to be in material breach shall have failed to cure such alleged material breach within thirty (30) days following the receipt of a written notice from the Party alleging the material breach which notice shall describe in reasonable detail the nature of the alleged material breach.

12.02. Calm may terminate this Agreement immediately, upon written notice, if XSPA experiences an insolvency event.

12.03. Beginning on February 28, 2019, XSPA may terminate this Agreement immediately, upon written notice, if Calm has not purchased and funded the purchase of the Second Closing Shares (as defined in the Series E Preferred Stock Purchase Agreement dated as of even date herewith by and between XSPA and Calm) by December 31, 2018.

12.04. Upon termination or expiration of this Agreement, Calm (at its sole expense) may engage a third party to audit XSPA's inventory of any and all Product Collateral then on hand at each Store and XSPA shall promptly return or dispose of such inventory as instructed by Calm at Calm's sole expense. In addition, if Calm does not provide XSPA with instructions within twenty (20) days of the termination or expiration of this Agreement, XSPA shall be permitted to dispose of any inventory of any and all Product Collateral then on hand at each Store. The Parties agree to promptly settle all accounting associated with such inventory of any and all Product Collateral then on hand at each Store upon termination or expiration of this Agreement. Except as expressly set forth herein, all of the rights granted hereunder shall automatically terminate and XSPA shall immediately cease the distribution, marketing and sale of Products and the Parties shall discontinue all use of the other Party's Marks.

12.05. The following provisions shall survive the expiration or termination of this Agreement: Sections 3, 9.07, 10, 12 and any other provision hereunder which by its terms, may reasonably be expected to survive such expiration or termination. In addition to the foregoing, upon termination each Party shall pay to the other Party any and all amounts then owed to the other Party.

13. *Arbitration*. Without limiting Section 16.08, any and all disputes or claims arising from either Party's rights or obligations under this Agreement shall be subject to arbitration. Any arbitration commenced with respect to a dispute or claim under this Agreement shall be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association and the Supplementary Procedures for Large, Complex Disputes then in effect (the "**Rules**"), except to the extent such rules conflict with this Section 13. In any arbitration, New York law shall govern, except to the extent that such law conflicts with the Rules or this Section 13. The Parties further agree that each issue submitted for arbitration be submitted to a panel of three (3) impartial arbitrators with each Party selecting one (1) arbitrator within fifteen (15) days after the commencement of the arbitration period and the two (2) selected arbitrators selecting a third arbitrator who is experienced in the commercial retail industry within thirty (30) days after the commencement of the arbitration period. Any arbitration hereunder shall commence within thirty (30) days after appointment of the third arbitrator and shall be held in New York, New York, USA. No discovery by either Party shall be permitted unless the arbitrators determine that the Party requesting such discovery has a substantial, demonstrable need. The arbitrators shall make final determinations as to any discovery disputes and all other procedural matters. If any Party fails to comply with the procedures in any arbitration in a manner deemed material by the arbitrators, then the arbitrators shall fix a reasonable time for compliance, and if the Party does not comply within such period, then a remedy deemed just by the arbitrators, including an award of default, may be imposed. The decision of the arbitrators shall be rendered no later than one hundred twenty (120) days after commencement of the arbitration period. The costs of arbitration shall be borne by the Party against whom the arbitral decision is made. Any judgment or decision rendered by the panel shall be binding upon the Parties and shall be enforceable by any court of competent jurisdiction.

14. *Notice*. All notices required or permitted by this Agreement shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by certified mail, return receipt requested, or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission during normal business hours, and shall be deemed sufficiently given if served in a manner specified in this Section 14 to the addresses and facsimile numbers noted below. Either Party may, by notice to the other, specify a different address for notice purposes. Any notice sent by certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmarks thereon. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone or facsimile confirmation of receipt of the transmission thereof, provided a copy is also delivered via delivery or mail. If notice is received after 5:00 PM, local time of the recipient, or on a Saturday or a Sunday or a legal holiday, it shall be deemed received on the next business day. Notice addresses are as follows:

If to XSPA:

XpresSpa Group, Inc.
780 Third Avenue, 12th Floor
New York, NY 10017
Attn: Edward Jankowski, CEO
Email: notices@xpresspagroup.com

If to Calm:

Calm.com, Inc.
140 2nd St., 3rd Floor
San Francisco, CA 94105
Attn: Dun Wang
Email: legal@calm.com and dun@calm.com

15. *Confidentiality*. Neither Party shall, directly or indirectly, without the other Party's consent, disclose to any third party (other than their respective employees or representatives) any information designated in writing as confidential by other Party (including the terms and conditions of this Agreement); *provided*, that the foregoing restriction shall not (a) apply to any information (i) generally available to, or known by, the public (other than as a result of disclosure in violation of this Section 15) or (ii) independently developed by the receiving Party, or (b) prohibit any disclosure (i) determined in good faith by any Party to be required by any listing agreement with any applicable national or regional securities exchange or market, securities laws or any other applicable law so long as the disclosing Party has made all reasonable efforts to obtain confidential treatment of the terms of the Agreement in connection with such disclosure and, to the extent practicable and legally permissible, the receiving Party provides the disclosing Party with reasonable prior notice of such disclosure or (ii) made in connection with the enforcement of any right or remedy relating to this Agreement.

16. *Miscellaneous Provisions.*

16.01. This Agreement embodies and constitutes the entire understanding between the Parties with respect to subject matter hereof, and no prior agreements, understandings, representations and statements, oral or written, shall have any legal effect with respect to such subject matter. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the Party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

16.02. This Agreement shall be governed by, and construed in accordance with the law of the State of New York. In the event of any litigation, arbitration, or other proceeding by which one Party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover from the other Party, in addition to any other relief awarded, any and all costs and expenses incurred with respect to such litigation, arbitration or other proceeding, including without limitation, reasonable attorneys' fees, disbursements and costs, and experts' fees and costs.

16.03. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

16.04. In the event that any one or more of the provisions of this Agreement shall be determined to be void or unenforceable by a court of competent jurisdiction, such determination will not render this Agreement invalid or unenforceable and the remaining provisions hereof shall remain in full force and effect.

16.05. Neither Party shall assign or transfer this Agreement or its rights hereunder without first obtaining the consent of the other, in writing, which consent shall not unreasonably be withheld or delayed. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns; provided, however, Calm may, without the prior written consent of XSPA, assign or otherwise transfer its rights and obligations to an affiliate of Calm or the acquirer of all or substantially all of the assets of Calm; provided, however, that the prior written consent of XSPA shall be required in connection with the assignment to an acquirer of all or substantially all of the assets of Calm if such acquirer's primary business is an airport-based provider of spa services.

16.06. For the convenience of the Parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

16.07. No waiver by either Party, whether express or implied, of any provision hereof, or of any breach or default thereof, shall constitute a continuing waiver of such provision or of any other provision of this Agreement. Acceptance of payments by Calm shall not be deemed a waiver by Calm of any violation of or default under any of the provisions of this Agreement by XSPA. Also, if for any reason any acts or omissions by XSPA hereunder not in conformance with any of the requirements hereof are not objected to by Calm from time to time, such a failure to object shall not be deemed a waiver by Calm of any such requirement and Calm may insist upon due performance thereof by XSPA at any time.

16.08. The Parties acknowledge that irreparable injury would be caused by any breach or threatened breach by the other Party of any of the provisions of this Agreement and both Parties shall have the right to enforce the specific performance of the Agreement and to apply for injunctive relief against any act which would violate any of its provisions.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

XpresSpa Group, Inc.

By: /s/Edward Jankowski
Name: Edward Jankowski
Title:

Calm.com, Inc.

By: /s/ Michael Acton Smith

Exhibit A

Exhibit B

Exhibit C

Exhibit D

Exhibit E

Exhibit 21

Subsidiaries of XpresSpa Group, Inc.

Name of Subsidiary	Jurisdiction of Incorporation
I/P Engine, Inc.	Virginia
Innovate/Protect, Inc.	Delaware
International Development Group, Ltd.	Maryland
Iron Gate Security, Inc.	Delaware
Quantum Stream Inc.	Delaware
Spa Products Import & Distribution Co., LLC	New York
Spa Products Wholesaling, LLC	New York
Vringo Acquisition, Inc.	Delaware
Vringo GmbH	Germany
Vringo Infrastructure, Inc.	Delaware
Vringo Labs, Inc.	Delaware
Vringo Ltd.	Israel
Vringo Mobile, Inc.	Delaware
VRTUAL, Inc.	Delaware
XpresSpa Amsterdam Airport B.V.	Netherlands
XpresSpa at Term. 4 JFK, LLC	New York
XpresSpa Atlanta Terminal A, LLC	New York
XpresSpa Atlanta Terminal C, LLC	New York
XpresSpa Austin Airport, LLC	New York
XpresSpa Charlotte Airport, LLC	New York
XpresSpa Chicago O'Hare, LLC	New York
XpresSpa Denver Airport, LLC	New York
XpresSpa DFW International, LLC	New York
XpresSpa DFW Kiosk, LLC	New York
XpresSpa DFW Terminal A, LLC	New York
XpresSpa Downtown NYC, LLC	New York
XpresSpa Europe B.V.	Netherlands
XpresSpa Franchising, LLC	New York
XpresSpa Franchising USA, LLC	New York
XpresSpa Holdings, LLC	Delaware
XpresSpa Houston Hobby, LLC	New York
XpresSpa Houston Intercontinental Terminal A, LLC	New York
XpresSpa Houston Intercontinental Terminal E, LLC	New York
XpresSpa International Holdings, LLC	New York
XpresSpa JFK Terminal 1, LLC	New York
XpresSpa JFK Terminal 7, LLC	New York
XpresSpa JFK Terminal 8, LLC	New York
XpresSpa John Wayne Airport, LLC	New York
XpresSpa LaGuardia Airport, LLC	New York
XpresSpa Las Vegas Airport, LLC	New York
XpresSpa LAX Airport, LLC	New York
XpresSpa LAX Tom Bradley, LLC	New York
XpresSpa Miami Airport, LLC	New York
XpresSpa Middle East B.V.	Netherlands
XpresSpa Middle East Limited	British Virgin Islands
XpresSpa Mobile Services, LLC	New York
XpresSpa MSP Airport, LLC	New York
XpresSpa Online Shopping, LLC	New York
XpresSpa Orlando International, LLC	New York
XpresSpa Orlando, LLC	New York
XpresSpa Philadelphia Airport, LLC	New York
XpresSpa Phoenix Airport, LLC	New York
XpresSpa Pittsburgh A, LLC	New York
XpresSpa Raleigh-Durham Intl, LLC	New York
XpresSpa RDU Airport, LLC	New York
XpresSpa S.F. International, LLC	New York
XpresSpa Salt Lake City, LLC	New York
XpresSpa Washington Reagan, LLC	New York

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the registration statements No. 333-225531 on Form S-3, and registration statements (No. 333-210257, No. 333-182853 and No. 333-181477) on Forms S-8 of XpresSpa Group, Inc. (formerly FORM Holdings Corp.), of our report dated April 1, 2019, with respect to the consolidated balance sheets of XpresSpa Group, Inc. and subsidiaries as of December 31, 2018 and 2017, and the related consolidated statements of operations and comprehensive loss, changes in stockholders' equity, and cash flows for the years then ended, which report appears in the December 31, 2018 annual report on Form 10-K of XpresSpa Group, Inc. and subsidiaries.

/s/ CohnReznick LLP

April 1, 2019
Jericho, New York

Exhibit 31.1

CERTIFICATIONS UNDER SECTION 302

I, Douglas Satzman, certify that:

1. I have reviewed this Annual Report on Form 10-K of XpresSpa Group, 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(s) 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 control 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(s) 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: April 1, 2019

/s/ DOUGLAS SATZMAN

Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATIONS UNDER SECTION 302

I, Janine Canale, certify that:

1. I have reviewed this Annual Report on Form 10-K of XpresSpa Group, 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(s) 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 control 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(s) 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: April 1, 2019

/s/ JANINE CANALE

Controller
(Principal Financial and Accounting Officer)

Exhibit 32

CERTIFICATIONS UNDER SECTION 906

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of XpresSpa Group, Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The Annual Report for the year ended December 31, 2018 (the "Form 10-K") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: April 1, 2019

/s/ DOUGLAS SATZMAN
Chief Executive Officer
(Principal Executive Officer)

Dated: April 1, 2019

/s/ JANINE CANALE
Controller
(Principal Financial and Accounting Officer)