

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

FORM 8-K

Current Report

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

Date of Report (Date of earliest event reported): July 8, 2019

XPRESSPA GROUP, INC.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation)

001-34785
(Commission File Number)

20-4988129
(I.R.S. Employer Identification No.)

780 Third Avenue, 12th Floor
New York, New York 10017
(Address of Principal Executive Offices and Zip Code)

Registrant's telephone number, including area code: (646) 525-4319

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

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

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common stock, par value \$0.01 per share	XSPA	The Nasdaq Stock Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Item 1.01 Entry into a Material Definitive Agreement.

Calm Private Placement

On July 8, 2019, XpresSpa Group, Inc. (the “Company”) entered into a securities purchase agreement (the “Calm Purchase Agreement”) with Calm.com, Inc. (“Calm”) pursuant to which the Company agreed to sell (i) an aggregate principal amount of \$2,500,000 in 5.00% unsecured convertible Notes due 2022 (the “Calm Notes”), which will be convertible into shares of Series E Convertible Preferred Stock (the “Series E Preferred Stock”) and (ii) warrants to purchase 937,500 shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), at an exercise price of \$2.00 per share (the “Calm Warrants”) (collectively, the “Calm Private Placement”).

The Company expects to receive \$2,500,000 in gross proceeds from the Calm Private Placement. The Company expects to close the Calm Private Placement as soon as possible following the signing of the transaction documents.

Purchase Agreement

The Calm Purchase Agreement contains representations and warranties of the Company and Calm which are typical for transactions of this type. In addition, the Calm Purchase Agreement contains customary covenants on the Company’s part that are typical for transactions of this type, as well as the following additional covenants: (i) until Calm holds less than 10% of the Calm Notes, the Company agreed not to enter into any variable rate transactions and (ii) the Company agreed to use its commercially reasonable efforts to hold a stockholder meeting within 120 days of the closing date at which the Company will solicit its stockholders’ affirmative vote for approval of its issuance of certain shares in connection with the transactions described in the transaction documents in accordance with applicable law and the rules and regulations of the Nasdaq Stock Market (“Shareholder Approval”).

The Calm Purchase Agreement obligates the Company to indemnify Calm and various related parties for certain losses including those resulting from (i) any misrepresentation or breach of any representation or warranty made by the Company, (ii) any breach of any obligation of the Company, and (iii) certain claims by third parties.

Notes and Warrants

The Calm Notes are the unsecured subordinated obligations of the Company. Unless earlier converted or redeemed, the Calm Notes will mature on May 31, 2022. The Calm Notes bear interest at a rate 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 Calm Notes are convertible at any time until the Calm Notes are no longer outstanding, in whole or in part, at the option of Calm into shares of Series E Preferred Stock at a conversion price equal to \$3.10 per share, except that no shares of Series E Preferred Stock may be issued as payment of interest or in connection with anti-dilution protection or voluntary reduction of the conversion price until receipt of Shareholder Approval. Interest on the Calm Notes is payable in arrears beginning on the last day of each February, May, August and November during the period beginning on the original issuance date and ending on, and including, the maturity date, when all amounts outstanding under the Calm Notes become due and payable in cash. The Company may elect to pay interest in cash, shares of Series E Preferred Stock or a combination thereof.

If the Company receives gross cash proceeds of \$10,000,000 or more in connection with a closing of an offering of its securities, the Calm Notes require the Company to make an offer to Calm to repay Calm out of the net proceeds, if such a closing occurs, of up to 100% of the principal amount of the Calm Notes and accrued but unpaid interest designated by Calm. In addition, if the volume weighted average price of the Common Stock is equal to or greater than 150% of the conversion price for the Series E Preferred Stock then in effect for at least 20 consecutive trading days, the Company has the option to prepay the outstanding principal amount of the Calm Notes, in whole or in part, by paying to Calm 110% of the principal amount to be redeemed, together with accrued but unpaid interest, if any, and any other sums due, accrued or payable to Calm under the Calm Notes.

The Calm Notes also contain certain negative covenants, including prohibitions on the incurrence of indebtedness, liens, amendments to the Company’s organizational documents, dividends, redemption, related party transactions and entry into any equity line of credit agreement or variable rate transactions. The Calm Notes also contain standard and customary events of default including, but not limited to, failure to make payments when due, failure to observe or perform covenants or agreements contained in the Calm Notes, existence of a default or event of default under any of the Calm transaction documents, the bankruptcy or insolvency of the Company or any of its subsidiaries and unsatisfied judgments against the Company.

The Calm Warrants entitle Calm to purchase an aggregate of 937,500 shares of Common Stock. The Calm Warrants are exercisable beginning six months from the date of issuance, have a term of five years and feature an exercise price equal to \$2.00 per share.

The terms of each of the Calm Notes and the Calm Warrants provide for (i) anti-dilution price protection for issuances of Common Stock at a price per share less than the price equal to the conversion price or exercise price, as applicable and (ii) voluntary reduction of the conversion price or exercise price, as applicable, by the Company in its discretion, in each case subject to Shareholder Approval. In the event of a “fundamental transaction,” as defined in the Calm Notes and Calm Warrants, (i) upon any subsequent conversion of the Calm Notes, Calm has the right to receive, for each share of Common Stock that would have been issuable upon such conversion immediately prior to the occurrence of such fundamental transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration receivable as a result of such fundamental transaction by a holder of the number of shares of Common Stock for which the Calm Notes are convertible immediately prior to such fundamental transaction and (ii) Calm will have the right to receive the value in cash of the Calm Warrants, as determined in accordance with the Black-Scholes option pricing model.

The Calm Notes and Calm Warrants and the shares of Common Stock issuable upon conversion or exercise of the Calm Notes and the Calm Warrants, as applicable (the “Underlying Calm Shares”) have not been registered under the Securities Act and were issued and sold in reliance upon the exemption from registration contained in Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D promulgated thereunder. Calm acquired the securities for investment and acknowledged that it is an accredited investor as defined by Rule 501 under the Securities Act. The Calm Notes, Calm Warrants and Underlying Calm Shares may not be offered or sold in the absence of an effective registration statement or exemption from the registration requirements under the Securities Act.

The foregoing descriptions of the Calm Purchase Agreement, Calm Note and Calm Warrants do not purport to be complete and are subject to and qualified in their entirety by reference to the full text of such documents, which are attached as Exhibits 10.1, 4.1 and 4.2, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

Registration Rights Agreement

In connection with the Calm Purchase Agreement, on July 8, 2019, the Company and Calm entered into a Registration Rights Agreement (the “Calm Registration Rights Agreement”), pursuant to which the Company has agreed to register the Underlying Calm Shares on a registration statement on Form S-3 (the “Calm Registration Statement”) to be filed with the SEC within forty-five (45) days after the date of the issuance of the Calm Notes and Calm Warrants and to cause the Calm Registration Statement to be declared effective under the Securities Act. If certain of the Company’s obligations under the Calm Registration Rights Agreement are not met, the Company is required to pay partial liquidated damages to Calm.

The foregoing description of the Calm Registration Rights Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of such document, which is attached as Exhibit 10.2 to this Current Report on Form 8-K and incorporated by reference herein.

Calm Collaboration Agreement

On July 8, 2019, the Company entered into an Amended and Restated Product Sale and Marketing Agreement with Calm (the “Amended and Restated Collaboration Agreement”), which replaced the parties’ previous Product Sale and Marketing Agreement, dated as of November 12, 2018. The Amended and Restated Collaboration Agreement primarily relates 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 Amended and Restated Collaboration Agreement shall remain in effect until July 31, 2021, unless terminated earlier in accordance with the Amended and Restated Collaboration Agreement, and automatically renews 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 of the Amended and Restated Collaboration Agreement.

The Company intends to file a copy of the Amended and Restated Collaboration Agreement as an exhibit to its Quarterly Report on Form 10-Q for the three month period ending September 30, 2019, portions of which that are not material and would be competitively harmful if publicly disclosed may be redacted pursuant to Regulation S-K Item 601(b).

Amendment to Certificate of Designation of Series E Convertible Preferred Stock

On July 8, 2019, the Company filed a certificate of amendment to the Certificate of Designation of Series E Convertible Preferred Stock (the “Series E COD Amendment”) with the State of Delaware to (i) increase the number of authorized shares of Series E Preferred to 2,397,060 and (ii) upon receipt of Shareholder Approval, reduce the conversion price to \$2.00. The Series E COD Amendment was approved by the Board of Directors of the Company (the “Company Board”). The Company intends to seek Shareholder Approval of the Series E COD Amendment.

A copy of the Series E COD Amendment is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

B3D Transaction

On July 8, 2019, the Company entered into a fourth amendment (the “Credit Agreement Amendment”) to its existing Credit Agreement with B3D, LLC (“B3D”) in order to, among other provisions, (i) extend the maturity date to May 31, 2021, (ii) reduce the applicable interest rate to 9.0%, and (iii) amend and restate its existing convertible promissory note in order to increase the principal amount owed to B3D to \$7.0 million, which principal and any interest accrued thereon will be convertible, at B3D’s option, into Common Stock subject to receipt of Shareholder Approval (the “B3D Note”) (together, the “B3D Transaction”).

Notes

The B3D Notes are the senior secured obligations of the Company, secured by the personal property of the Company and its subsidiaries. Unless earlier converted or redeemed, the B3D Notes will mature on May 31, 2021. The B3D Notes bear interest at a rate of 9.00% per annum, calculated on a monthly basis. Interest only is payable in arrears on the last business date of each month (the “Monthly Interest”). Notwithstanding the foregoing, until the earlier of (i) ninety days from the date of the Credit Agreement Amendment or (ii) the date upon which Shareholder Approval is received (the “Interest Deferment Date”), the Monthly Interest will continue to accrue, will be compounded monthly, and all unpaid amounts thereof will be due and payable on the Interest Deferment Date. At the option of the Company, all or any portion of the Monthly Interest that is payable (i) on the Interest Deferment Date or (ii) after the Interest Deferment Date, but not more than twenty-one days and not less than five trading days prior to the date on which each payment of Monthly Interest is due, may be paid in shares of Common Stock. At any time after receipt of Shareholder Approval until the B3D Note is no longer outstanding, all or any portion of the outstanding principal amount of the B3D Note, plus any accrued and unpaid interest thereon, shall be convertible into Common Stock at the option of B3D at a conversion price equal to \$2.00 per share.

In addition, the Company has the option to prepay the outstanding principal amount of the B3D Notes in whole or in part. In the event the Company prepays the B3D Note in full before the date that is fifteen business days prior to the maturity date, the Company shall pay a premium equal to the greater of (i) 4% of the outstanding principal amount of the B3D Notes that is prepaid or (ii) the Black Scholes value of the outstanding principal amount that is prepaid.

The terms of the B3D Notes provide for anti-dilution protection for issuances of Common Stock at a price per share less than the price equal to the conversion price, subject to Shareholder Approval. In the event of a “fundamental transaction” as defined in the B3D Notes, upon any subsequent conversion of the B3D Notes, B3D has the right to receive, for each share of Common Stock that would have been issuable upon such conversion immediately prior to the occurrence of such fundamental transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration receivable as a result of such fundamental transaction by a holder of the number of shares of Common Stock for which the B3D Note is convertible immediately prior to such fundamental transaction.

The B3D Notes and the shares of Common Stock issuable upon conversion of the B3D Notes (the “Underlying B3D Shares”) have not been registered under the Securities Act and were issued and sold in reliance upon the exemption from registration contained in Section 4(a)(2) of the Securities Act and Rule 506(b) of Regulation D promulgated thereunder. B3D acquired the securities for investment and acknowledged that it is an accredited investor as defined by Rule 501 under the Securities Act. The B3D Notes and Underlying B3D Shares may not be offered or sold in the absence of an effective registration statement or exemption from the registration requirements under the Securities Act.

The foregoing descriptions of the Credit Agreement Amendment and B3D Note do not purport to be complete and are subject to and qualified in their entirety by reference to the full text of such documents, which are attached as Exhibits 10.3 and 4.3, respectively, to this Current Report on Form 8-K and are incorporated by reference herein.

Registration Rights Agreement

In connection with the B3D Notes, on July 8, 2019, the Company and B3D entered into a Registration Rights Agreement (the “B3D Registration Rights Agreement”), pursuant to which the Company has agreed to register the Underlying B3D Shares on a registration statement on Form S-3 (the “B3D Registration Statement”) to be filed with the SEC within forty-five (45) days after the date of the issuance of the B3D Notes and to cause the B3D Registration Statement to be declared effective under the Securities Act. If certain of the Company’s obligations under the B3D Registration Rights Agreement are not met, the Company is required to pay partial liquidated damages to B3D.

The foregoing description of the B3D Registration Rights Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of such document, which is attached as Exhibit 10.4 to this Current Report on Form 8-K and incorporated by reference herein.

Series D Amendment and December 2016 Warrant Amendment

Amendment to Certificate of Designation of Series D Convertible Preferred Stock

On July 8, 2019, the Company filed a certificate of amendment to the Certificate of Designation of Series D Convertible Preferred Stock (the “Series D COD Amendment”) with the State of Delaware to, upon receipt of Shareholder Approval, reduce the conversion price to \$2.00 and provide for automatic conversion of the Series D Convertible Preferred Stock into shares of Common Stock. The Series D COD Amendment was approved by the Company Board. The Company intends to seek Shareholder Approval of the Series D COD Amendment.

A copy of the Series D COD Amendment is attached hereto as Exhibit 3.2 and is incorporated herein by reference.

December 2016 Warrant Amendment

On July 8, 2019, the Company entered into an amendment to certain outstanding warrants issued in December 2016 to the holders of its Series D Convertible Preferred Stock (the “December 2016 Warrant Amendment”) to provide for (i) a reduction in the exercise price to \$2.00, (ii) certain anti-dilution price protection and (iii) voluntary reduction of the exercise price by the Company in its discretion. The Company intends to seek Shareholder Approval in connection with the December 2016 Warrant Amendment.

The foregoing description of the December 2016 Warrant Amendment does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of such document, which is attached as Exhibit 4.4 to this Current Report on Form 8-K and incorporated by reference herein.

May 2018 SPA Amendment, Series F Preferred Stock and Series B Preferred Stock

May 2018 SPA Amendment

On July 8, 2019, the Company entered into an amendment (the “May 2018 SPA Amendment”) to that certain Securities Purchase Agreement, dated as of May 15, 2018, by and between the Company and the purchasers party thereto (the “May 2018 SPA”), to provide for, among other provisions, (i) an update to certain definitions, including the definition of an “Exempt Issuance,” (ii) the waiver of certain provisions regarding restrictions on subsequent equity sales and participation in subsequent financings, and the removal of certain such provisions upon receipt of Shareholder Approval, (iii) the amendment to certain provisions of the Class A Warrants issued pursuant to the May 2018 SPA to modify certain provisions in connection with a Notice Failure (as such term is defined in the Class A Warrants), and to reduce the exercise price of the Class A Warrants issuable pursuant to anti-dilution price protection contained in such Class A Warrants to \$2.00 per share following receipt of Shareholder Approval (iv) the cancellation of all outstanding Class B Warrants and (v) the establishment of a new class of preferred stock, to be designated Series F Convertible Preferred Stock, par value \$0.01 per share (the “Series F Preferred Stock”) and the issuance of 9,000 shares of such Series F Preferred Stock to the parties to the May 2018 SPA Amendment, which will be convertible into Common Stock upon receipt of Shareholder Approval.

Certificate of Designation of Series F Preferred Stock

In connection with the May 2018 SPA Amendment, on July 8, 2019, the Company filed with the Secretary of State of the State of Delaware a Certificate of Designation of Preferences, Rights and Limitations of Series F Convertible Preferred Stock (the "Series F Certificate of Designation") establishing and designating the rights, powers and preferences of the Series F Preferred Stock. The Company designated 9,000 shares of Series F Preferred Stock.

Pursuant to the Series F Certificate of Designation, the holders of the Series F Preferred Stock are entitled, among other things, to the right to participate in any dividends and distributions paid to common stockholders on an as-converted basis. The Series F Preferred Stock has no voting rights except as required by law. The Series F Preferred Stock contains certain anti-dilution price protection such that, following receipt of Shareholder Approval, if at any time while the Series F Preferred Stock is outstanding, the Company issues any shares of Common Stock without consideration or for a consideration per share less than the conversion price then in effect for the Series F Preferred Stock, then the conversion price of the Series F Preferred Stock shall be lowered to a price equal to such issuance. The Series F Preferred Stock will be convertible only following receipt of Shareholder Approval, at any time and from time to time without the payment of additional consideration into shares of Common Stock at a conversion price of \$2.00 per share, subject to certain adjustments and has a stated value of \$100.00 per share of Series F Preferred Stock. In the event of any liquidation or dissolution of the Company, the Series F Preferred Stock will rank junior to the Company's Series E Preferred Stock, Series D Preferred Stock, and any other class of preferred stock of senior rank to the Series F Preferred Stock, senior to any other class of preferred stock and to the Common Stock in the distribution of assets, to the extent legally available for distribution. Each share of Series F Preferred Stock will initially be convertible into 50 shares of Common Stock.

Pursuant to the terms of the Series F Certificate of Designation, under certain conditions, the Company has the right, but not the obligation to convert the outstanding shares of Series F Preferred Stock into Common Stock. Additionally, following receipt of Shareholder Approval, the Company will have the option to repurchase the shares of Series F Preferred Stock, in whole or in part, by paying to the holder a sum of money in cash equal to the number of shares of Series F Preferred Stock held by such holder multiplied by the stated value then in effect.

The offering is exempt from registration pursuant to the exemption for transactions by an issuer not involving any public offering under Section 4(a)(2) the Securities Act and Regulation D under the Securities Act.

The shares of Series F Preferred Stock have not been registered under the Securities Act or any state securities laws and may not be offered or sold in the United States absent registration with the SEC or an applicable exemption from the registration requirements.

Certificate of Elimination of Series B Preferred Stock

On July 8, 2019, the Company filed a Certificate of Elimination of Shares of Series B Preferred Stock (the "Certificate of Elimination") to the Company's amended and restated certificate of incorporation. The Certificate of Elimination reduced, pursuant to Section 151(g) of the Delaware General Corporation Law, the number of authorized shares of Series B Convertible Preferred Stock of the Company, par value \$0.01 per share (the "Series B Preferred Stock") from 1,609,167 shares of Series B Preferred Stock to zero shares of Series B Preferred Stock, the number of shares of Series B Preferred Stock issued and outstanding as of July 8, 2019. Pursuant to the provisions of Section 151(g) of the Delaware General Corporation Law, the 1,609,167 authorized shares of Series B Preferred Stock eliminated pursuant to the reduction return to the available undesignated preferred stock of the Company and may be re-designated into another series of preferred stock.

The foregoing descriptions of the May 2018 SPA Amendment, Series F Certificate of Designation and Certificate of Elimination do not purport to be complete and are subject to and qualified in their entirety by reference to the full text of such documents, which are attached as Exhibit 10.5, 3.3 and 3.4, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

Item 3.02 Unregistered Sales of Equity Securities

The descriptions regarding the Calm Private Placement, B3D Transaction and May 2018 SPA Amendment, Series F Preferred Stock and Series B Preferred Stock are incorporated by reference into this Item 3.02.

Item 3.03 Material Modification to Rights of Security Holders.

The descriptions regarding the Calm Private Placement, B3D Transaction, Series D Amendment and December 2016 Warrant Amendment and May 2018 SPA Amendment, Series F Preferred Stock and Series B Preferred Stock are incorporated by reference into this Item 3.03.

Item 8.01 Other Events.

On July 8, 2019, the Company issued a press release announcing the signing of the transactions described above. A copy of the press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<i>Exhibit Number</i>	<i>Description</i>
3.1	Amendment to the Certificate of Designation, Preferences, Rights and Limitations of the Series E Convertible Preferred Stock, dated as of July 8, 2019.
3.2	Form of Amendment to the Certificate of Designation, Preferences, Rights and Limitations of the Series D Convertible Preferred Stock.
3.3	Form of Certificate of Designation, Preferences, Rights and Limitations of the Series F Convertible Preferred Stock, dated as of July 8, 2019.
3.4	Certificate of Elimination of Shares of Series B Convertible Preferred Stock, dated as of July 8, 2019.
4.1	Form of Calm Note.
4.2	Form of Calm Warrant to Purchase Common Stock.
4.3	Form of B3D Note.
4.4	Form of December 2016 Warrant Amendment, dated as of July 8, 2019.
10.1	Form of Calm Securities Purchase Agreement, dated as of July 8, 2019.
10.2	Form of Calm Registration Rights Agreement, dated as of July 8, 2019.
10.3	Fourth Amendment to Credit Agreement, dated as of July 8, 2019.
10.4	Form of B3D Registration Rights Agreement, dated as of July 8, 2019.
10.5	Form of Amendment to May 2018 Securities Purchase Agreement, dated as of July 8, 2019.
99.1	Press release, dated July 8, 2019.

SIGNATURES

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

XPRESSPA GROUP, INC.

Dated: July 8, 2019

By: /s/ Douglas Satzman
Name: Douglas Satzman
Title: Chief Executive Officer

XPRESSPA GROUP, INC.
AMENDMENT TO THE
CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES E CONVERTIBLE PREFERRED STOCK

This Amendment to the Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock (this "**Amendment**") is dated as of July 8, 2019.

WHEREAS, the board of directors ("**Board of Directors**") of XpresSpa Group, Inc., a Delaware corporation (the "**Company**"), pursuant to authority granted to it by the certificate of incorporation of the Company, has previously fixed the rights, preferences, restrictions and other matters relating to a series of the Company's preferred stock, consisting of 1,473,300 authorized shares of preferred stock, classified as Series E Convertible Preferred Stock (the "**Series E Preferred Stock**") and the Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock (the "**Certificate of Designation**") was filed with the Secretary of State of the State of Delaware on November 13, 2018 evidencing such terms;

WHEREAS, Calm.com, Inc., a Delaware corporation (the "**Holder**") is the record and beneficial owner of certain shares of the Series E Preferred Stock, issued pursuant to that certain (a) Series E Preferred Stock Purchase Agreement, dated as of November 12, 2018, by and between the Company and Calm.com, Inc. and (b) the Certificate of Designation;

WHEREAS, pursuant to Section 19 of the Certificate of Designation, any of the rights, powers, preferences and other terms of the Series E Preferred Stock may be waived or amended on behalf of all holders of Series E Preferred Stock by the affirmative written consent or vote of the holders of at least 50% of the shares of Series E Preferred Stock then outstanding (the "**Required Holders**");

WHEREAS, the Holder constitutes the Required Holders pursuant to the Certificate of Designation and has consented in writing, in accordance with Section 228 of the General Corporation Law of the State of Delaware (the "**DGCL**"), on July 8, 2019, to this Amendment on the terms set forth herein; and

WHEREAS, the Board of Directors has duly adopted resolutions proposing to adopt this Amendment and declaring this Amendment to be advisable and in the best interest of the Company and its stockholders.

NOW, THEREFORE, this Amendment has been duly adopted in accordance with Section 242 of the DGCL and has been executed by a duly authorized officer of the Company as of the date first set forth above to amend the terms of the Certificate of Designation as follows:

1. Capitalized Terms. Unless otherwise specified in this Amendment, all terms herein shall have the same meanings ascribed to them in the Certificate of Designation.

2. Amendment to Section 1. Section 1 of the Certificate of Designation is hereby amended and restated in its entirety as follows:

“Designation and Amount. The class of preferred stock hereby classified shall be designated the “Series E Convertible Preferred Stock”. The number of authorized shares of the Series E Convertible Preferred Stock shall be 2,397,060, 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.”

3. Amendment to Section 5. Section 5 of the Certificate of Designation is hereby amended and restated in its entirety as follows:

“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. Notwithstanding the foregoing, in no event shall the holders of shares of Series E Convertible Preferred Stock issued pursuant to that certain Unsecured Convertible Note due May 31, 2022 (the “Note”) be permitted to exercise a greater number of votes than such holders would have been entitled to cast if the Note had immediately been converted into shares of Common Stock at a conversion price equal to \$1.73 (subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events). 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.”

4. Amendment to Section 6.1.1.1. Section 6.1.1.1 of the Certificate of Designation is hereby amended and restated in its entirety as follows:

“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 (before giving effect to the reverse stock split of the Common Stock that was effective on February 22, 2019 (the “Reverse Stock Split”)), but shall be amended to be equal to \$2.00, as may be adjusted as provided below, upon receipt of shareholder approval pursuant to Nasdaq Listing Rule 5635(d) (“Shareholder Approval”). Such 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. For the avoidance of doubt, any adjustments made to the Series E Conversion Price after July 8, 2019 but prior to receipt of Shareholder Approval shall be made equitably and proportionately to the Series E Conversion Price following Shareholder Approval. For the further avoidance of doubt, other than the Reverse Stock Split, no other event has occurred after the Initial Issuance Date but prior to July 8, 2019 that would result in the adjustment of the Series E Conversion Price.”

5. No Other Amendment. Except for the matters set forth in this Amendment, all other terms of the Certificate of Designation and the Series E Preferred Stock shall remain unchanged and in full force and effect.

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IN WITNESS WHEREOF, the Company has caused this Amendment to be signed by the undersigned as of July 8, 2019.

XPRESSPA GROUP, INC.

By: _____

Name: Douglas Satzman

Title: Chief Executive Officer

XPRESSPA GROUP, INC.
AMENDMENT TO THE
CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS AND LIMITATIONS
OF SERIES D CONVERTIBLE PREFERRED STOCK

This Amendment to the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock (this “**Amendment**”) is dated as of July 8, 2019.

WHEREAS, the board of directors (“**Board of Directors**”) of XpresSpa Group, Inc., a Delaware corporation (the “**Company**”), pursuant to authority granted to it by the certificate of incorporation of the Company, has previously fixed the rights, preferences, restrictions and other matters relating to a series of the Company’s preferred stock, consisting of 500,000 authorized shares of preferred stock, classified as Series D Convertible Preferred Stock (the “**Series D Preferred Stock**”) and the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock (the “**Certificate of Designation**”) was filed with the Secretary of State of the State of Delaware on December 23, 2016 evidencing such terms;

WHEREAS, the Holders identified on the signature pages hereto (the “**Holders**”) are the record and beneficial owners of certain shares of Series D Preferred Stock, issued pursuant to that certain (a) Agreement and Plan of Merger, dated as of August 8, 2016, as subsequently amended, by and among the Company (formerly known as FORM Holdings Corp.), FHXMS, LLC, XpresSpa Holdings LLC, the unitholders of XpresSpa Holdings LLC who were parties thereto (the “**Unitholders**”) and Mistral XH Representative, LLC, as representative of the Unitholders and (b) the Certificate of Designation;

WHEREAS, pursuant to Section 18 of the Certificate of Designation, any of the rights, powers, preferences and other terms of the Series D Preferred Stock may be waived or amended on behalf of all holders of Series D Preferred Stock by the affirmative written consent or vote of the holders of at least 50% of the shares of Series D Preferred Stock then outstanding (the “**Required Holders**”);

WHEREAS, the Holders constitute the Required Holders pursuant to the Certificate of Designation and have consented in writing, in accordance with Section 228 of the General Corporation Law of the State of Delaware (the “**DGCL**”), on July 8, 2019, to this Amendment on the terms set forth herein;

WHEREAS, the Board of Directors has duly adopted resolutions proposing to adopt this Amendment and declaring this Amendment to be advisable and in the best interest of the Company and its stockholders; and

WHEREAS, the Holders have agreed to convert their shares of Series D Preferred Stock into shares of common stock, par value \$0.01 per share, of the Company (the “**Common Stock**”) pursuant to Section 6.1.1 of the Certificate of Designation, as amended by this Amendment, upon receipt of Shareholder Approval (as defined below).

NOW, THEREFORE, this Amendment has been duly adopted in accordance with Section 242 of the DGCL and has been executed by a duly authorized officer of the Company as of the date first set forth above to amend the terms of the Certificate of Designation as follows:

1. Capitalized Terms. Unless otherwise specified in this Amendment, all terms herein shall have the same meanings ascribed to them in the Certificate of Designation.

2. Amendment to Section 6.1.1.1. Section 6.1.1.1 of the Certificate of Designation is hereby amended and restated in its entirety as follows:

“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 (before giving effect to the reverse stock split of the Common Stock that was effective on February 22, 2019 (the “Reverse Stock Split”)), but shall be amended to be equal to \$2.00, as may be adjusted as provided below, upon receipt of shareholder approval pursuant to Nasdaq Listing Rule 5635(a) (“Shareholder Approval”). Such 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. For the avoidance of doubt, any adjustments made to the Series D Conversion Price after July 8, 2019 but prior to receipt of Shareholder Approval shall be made equitably and proportionately to the Series D Conversion Price following Shareholder Approval. For further avoidance of doubt, other than the Reverse Stock Split, no other event has occurred after the Initial Issuance Date but prior to July 8, 2019 that would result in the adjustment of the Series D Conversion Price.”

3. Amendment to Section 6.3.4. Section 6.3.4 of the Certificate of Designation is hereby amended and restated in its entirety to add a new Section 6.3.4 as follows:

“6.3.4 Each share of Series D Convertible Preferred Stock shall, automatically and without further action on the part of any holder thereof, be converted effective upon, subject to, and concurrently with, the receipt of the Shareholder Approval, into a number of fully paid and nonassessable shares of Common Stock calculated based on the then-applicable Series D Conversion Rate (after giving effect to the amendment thereto occurring upon receipt of the Shareholder Approval as provided in Section 6.1.1). Each holder of any shares of Series D Convertible Preferred Stock converted pursuant to this Section 6.3.4 shall deliver to this corporation during regular business hours at the office of any transfer agent of this corporation for the Series D Convertible Preferred Stock, or at such other place as may be designated by the Corporation, the certificate or certificates for the shares so converted, duly endorsed or assigned in blank or to the Corporation. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder, at the place designated by such holder, a certificate or certificates for the number of full shares of the Common Stock to be issued and such holder shall be deemed to have become a stockholder of record of Common Stock on the date of receipt of the Shareholder Approval unless the transfer books of the Corporation are closed on that date, in which event he, she or it shall be deemed to have become a stockholder of record of Common Stock on the next succeeding date on which the transfer books are open.”

4. No Other Amendment. Except for the matters set forth in this Amendment, all other terms of the Certificate of Designation and the Series D Preferred Stock shall remain unchanged and in full force and effect.

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IN WITNESS WHEREOF, each of the parties has caused this Amendment to be executed by its duly authorized representatives.

XPRESSPA GROUP, INC.

By: _____

Name: Douglas Satzman

Title: Chief Executive Officer

XPRESSPA GROUP, INC.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES F 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 9,000 shares of the preferred stock which the Corporation has the authority to issue, classified as Series F 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 F 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 F Convertible Preferred Stock". The initial number of authorized shares of the Series F Convertible Preferred Stock shall be 9,000, 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 F Convertible Preferred Stock. Each share of the Series F 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 F Convertible Preferred Stock (the "Initial Issuance Date"), the holders of Series F 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 F 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.

3. Ranking.

3.1 Except with respect to any current series of preferred stock of senior rank to the Series F Preferred Stock (including the Series D Preferred Stock and Series E Preferred Stock) in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (collectively, the "Senior Preferred Stock") and any current or future series of preferred stock of pari passu rank to the shares of Series F Preferred Stock in respect of the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (collectively, the "Parity Stock"), all shares of capital stock of the Corporation shall be junior in rank to all shares of Series F Preferred Stock with respect to the preferences as to dividends, distributions and payments upon the liquidation, dissolution and winding up of the Corporation (collectively, the "Junior Stock"). In the event of the merger or consolidation of the Corporation with or into another corporation, the shares of Series F Preferred Stock shall maintain their relative rights, powers, designations, privileges and preferences provided for herein and no such merger or consolidation shall result inconsistent therewith.

4. 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. “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.

4.1.4. “Equity Conditions” means each of the following conditions: (i) a registration statement shall be effective and available for the issuance or resale of all shares of Common Stock issuable upon conversion of the Series F Preferred Stock; (ii) the Corporation shall have delivered all shares of Common Stock upon conversion of all shares of Series F Preferred Stock previously exercised by the Holder; (iii) any applicable shares of Common Stock to be issued in connection with the event requiring determination may be issued in full without violating the rules or regulations of the Principal Market or any other applicable Eligible Market; (iv) the Holder shall not be in possession of any material, nonpublic information received from the Corporation or any of its agents or affiliates; and (v) the shares of Common Stock issuable pursuant the event requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market. For point of clarification, the non-delivery of shares of Common Stock as a result of their designation as “Excess Shares” shall not constitute an Equity Conditions Failure.

4.1.5. “Exchange Act” means the Securities Exchange Act of 1934, as amended.

4.1.6. “Exempt Issuance” means the issuance of (a) shares of Common Stock and options to officers, directors, employees or consultants of the Corporation after the Initial Issuance Date pursuant to plans approved by the shareholders of the Corporation and which issuances are approved by a majority of the independent members of a committee of the board of directors, (b) securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Certificate of Designation, provided that such securities and any term thereof have not been amended since the date of this Certificate of Designation to increase the number of such securities or to decrease the issue price, exercise price, exchange price or conversion price of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the 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 be intended to provide to the Corporation substantial additional benefits in addition to the investment of funds, but shall not include a transaction in which the Corporation is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, (d) up to 25,000 shares of Common Stock, (e) securities as payment for investment banking services provided to the Corporation, (f) securities issued to third party vendors as payment for goods or services, (g) securities issued to the Corporation’s Airport Concession Disadvantaged Business Enterprise partners, and (h) (i) securities issued as payment of interest pursuant to the Credit Agreement dated as of April 22, 2015, as subsequently amended through the date hereof by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd. (including, without limitation, that certain Fourth Amendment to Credit Agreement, dated as of July 8, 2019, by and between the Company and B3D, LLC).

4.1.7. “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.

4.1.8. “Principal Market” means the Nasdaq Capital Market.

4.1.9. “Required Holders” means the holders of record of a majority of the then outstanding shares of Series F Convertible Preferred Stock.

4.1.10. “Shareholder Approval” means such approval as may be required by the applicable rules and regulations of the Nasdaq Stock Market (or any successor entity) from the shareholders of the Corporation with respect to the transactions contemplated by the SPA Amendment and this Certificate of Designation (including, without limitation, Sections 6 and Section 7.1.3 hereof).

4.1.11. “SPA Amendment” means that certain Amendment to Securities Purchase Agreement by and between the Corporation and the signatories identified therein dated as of July 8, 2019.

4.1.12. “Stated Value” shall mean \$100.00 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 F Convertible Preferred Stock after the Initial Issuance Date.

4.1.13. “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).

4.1.14. “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. 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.

4.3. 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 Section 3.1 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 Section 3.1 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 4.3, 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. Holders of Series F Preferred Stock shall have no voting rights, except as required by law (including without limitation, the DGCL) and as expressly provided in this Certificate of Designation. Subject to Section 6.2.10, to the extent that under the DGCL holders of the Series F Preferred Stock are required to vote on a matter with holders of shares of Common Stock, voting together as one class, each share of Series F Preferred Stock shall entitle the holder thereof to cast that number of votes per share as is equal to the number of shares of Common Stock into which it is then convertible (subject to the ownership limitations specified in Section 6.2.10 hereof) using the record date for determining the stockholders of the Corporation eligible to vote on such matters as the date as of which the Series F Conversion Price is calculated. Holders of the shares of Series F Preferred Stock shall be entitled to written notice of all stockholder meetings or written consents (and copies of proxy materials and other information sent to stockholders) with respect to which they would be entitled by vote, which notice would be provided pursuant to the Corporation’s bylaws and the DGCL.

6. Conversion.

6.1. Holder’s Right to Convert. Upon receipt of Shareholder Approval, the holders of the Series F 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 F 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 F Conversion Price (as defined below) in effect at the time of conversion (the result of such fraction, the “Series F Conversion Rate”). The “Series F Conversion Price” shall initially be equal to \$2.00. Such initial Series F Conversion Price, and the rate at which shares of Series F 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 F Conversion Rate shall be equal to 50 shares of Common Stock for each share of Series F 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 F Convertible Preferred Stock.

6.1.2. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series F 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 F 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 F Convertible Preferred Stock shall be conducted in the following manner:

6.2.1. Conversion Notice. The Holder of record of shares of Series F 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 F 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 F 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 second (2nd) 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 F Convertible Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series F 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 F 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 F Convertible Preferred Stock not converted.

6.2.3. Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series F 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 F 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 F Convertible Preferred Stock upon physical surrender of any Series F Convertible Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series F 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 F 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 F 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 F Convertible Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series F Convertible Preferred Stock unless such Holder first physically surrenders the certificate representing the Series F 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 F 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 F Convertible Preferred Stock, the number of shares of Series F Convertible Preferred Stock represented by such certificate may be less than the number of shares of Series F Convertible Preferred Stock stated on the face thereof.

6.2.4. Reservation of Shares. The Corporation shall, so long as any shares of Series F 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 F 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 F 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 F 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 F Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series F 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 F Convertible Conversion Price.

6.2.5. Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Series F 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 F 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 F 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 F 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 F 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 conversion as provided in Section 6.1.2, and payment of any accrued but unpaid dividends thereon (whether or not declared). Any shares of Series F 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 F 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 F 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 F 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 two (2) Trading Days after the Corporation's receipt of the copy of a Conversion Notice (the "Share Delivery Date"), 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 F Convertible Preferred Stock (a "Conversion Failure"), then (X) the Company shall pay in cash to the Holder on each day after the Share Delivery Date and during such Conversion Failure an amount equal to 1.0% of the product of (A) the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which the Holder is entitled, and (B) the higher of (i) the then in effect Series F Conversion Price or (ii) the closing price of the Common Stock on the date of the applicable Conversion Notice, and (Y) the Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned, as the case may be, any portion of the shares of Series F Preferred Stock that have not been converted pursuant to such Conversion Notice; provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 6.2.9 or otherwise. In addition, if on or after the Share Delivery Date 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 two (2) 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).

6.2.10. Notwithstanding anything to the contrary contained in this Certificate of Designation, the shares of Series F Preferred Stock held by a Holder shall not be convertible by such Holder, and the Corporation shall not effect any conversion of any shares of Series F Preferred Stock held by such Holder, to the extent (but only to the extent) that such Holder or any of its affiliates would beneficially own in excess of 4.99% (the "Maximum Percentage") of the Common Stock. To the extent the above limitation applies, the determination of whether the shares of Series F Preferred Stock held by such Holder shall be convertible (vis-à-vis other convertible, exercisable or exchangeable securities owned by such Holder or any of its affiliates) and of which such securities shall be convertible, exercisable or exchangeable (as among all such securities owned by such Holder and its affiliates) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Corporation for conversion, exercise or exchange (as the case may be). No prior inability of a Holder to convert shares of Series F Preferred Stock, or of the Corporation to issue shares of Common Stock to such Holder, pursuant to this Section 6.2.10. shall have any effect on the applicability of the provisions of this Section 6.2.10. with respect to any subsequent determination of convertibility or issuance (as the case may be). For purposes of this Section 6.2.10., beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. The provisions of this Section 6.2.10. shall be implemented in a manner otherwise than in strict conformity with the terms of this Section 6.2.10. to correct this Section 6.2.10. (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. The limitations contained in this Section 6.2.10. shall apply to a successor holder of shares of Series F Preferred Stock. The Corporation may not waive this Section 6.2.10. without the consent of holders of a majority of its Common Stock. For any reason at any time, upon the written or oral request of a Holder, the Corporation shall within one (1) Business Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Certificate of Designation.

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 F Convertible Preferred Stock, if (i) the closing price of the Common Stock listed on the Principal Market equals or exceeds \$2.75 (subject to appropriate adjustments for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar transactions after the Issuance Date) for not less than fifteen (15) consecutive Trading Days (the "Corporation Conversion Right Measuring Period"); (ii) the daily average number of shares of Common Stock listed on the Principal Market traded during the Corporation Conversion Right Measuring Period equals or exceeds 100,000 (subject to appropriate adjustments for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar transactions after the Issuance Date); and (iii) no Equity Conditions Failure (as defined below) has occurred (unless such Equity Conditions Failure has been waived) as of such date (clauses (i), (ii) and (iii), the "Corporation Conversion Right Event"), the Corporation will have the right, but not the obligation, to convert each outstanding share of Series F Convertible Preferred Stock into a number of fully paid and nonassessable shares of Common Stock calculated based on the Series F Conversion Rate as of the Mandatory Conversion Date (as defined below) (a "Mandatory Conversion").

6.3.2. The Corporation may exercise its right to require conversion under Section 6.3.1 by delivering within not more than two (2) Trading Days following the end of such Corporation Conversion Right Measuring Period a written notice thereof by facsimile or electronic mail to the Holder (the "Mandatory Conversion Notice" and the date that the Holder received such notice is referred to as the "Mandatory Conversion Notice Date"), which conversion date shall be thirty (30) days following delivery of the Mandatory Conversion Notice (the "Mandatory Conversion Date"). The Company covenants and agrees that it will honor all Conversion Notices tendered from the time of delivery of the Mandatory Conversion Notice until the Corporation Conversion Date has occurred. Unless otherwise indicated by the Holder, all shares of Series F Preferred Stock converted by the Holder after the Mandatory Conversion Notice Date shall reduce the number of shares of Series F Preferred Stock required to be converted on the Mandatory Conversion Date.

6.3.3. On the Mandatory Conversion Date, the outstanding shares of Series F 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 F Convertible Preferred Stock shall represent only the shares of Common Stock into which the shares of Series F Convertible Preferred Stock 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 F Convertible Preferred Stock unless certificates evidencing such shares of Series F Convertible Preferred Stock, 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 F Convertible Preferred pursuant to this Section 6.3, the Holders of shares of Series F 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 two (2) Business Days of the Holder's delivery of the applicable Series F Convertible Preferred certificates. Notwithstanding anything to the contrary contained herein, if the conversion of a holder's shares of Series F Preferred Stock would result in the Holder exceeding the Maximum Percentage, the Holder shall not be entitled to receive any such Excess Shares (or the beneficial ownership of, including voting rights with respect to, any such Excess Shares) and any Excess 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. Further, notwithstanding anything to the contrary set forth in this Section 6.3.3, upon conversion of any shares of Series F Preferred Stock in accordance with the terms hereof, no holder thereof shall be required to physically surrender the certificate representing the shares of Series F Preferred Stock to the Company following conversion thereof unless (A) the full or remaining number of shares of Series F Preferred Stock represented by the certificate are being converted or (B) such Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of shares of Series F Preferred Stock upon physical surrender of any shares of Series F Preferred Stock.

7. Adjustment of Series F Conversion Price.

7.1.1. Adjustment of Series F Conversion Price upon Subdivision or Combination of Common Stock. The Series F Conversion Price shall be subject to adjustment from time to time in accordance with this Section 7. 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 F 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 F Conversion Price in effect immediately prior to such combination will be proportionately increased.

7.1.2. Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 7, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series F 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 F 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 F 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 7 with respect to the rights and interests thereafter of the holders of the Series F Convertible Preferred Stock, to the end that the provisions set forth in this Section 7 (and the provisions with respect to changes in and other adjustments of the Series F 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 F Preferred Stock.

7.1.3. Certain Anti-Dilution Adjustments. If the Corporation shall, at any time while any of the shares of Series F Preferred Stock are outstanding, issue any shares of its Common Stock, other than Exempt Issuances, without consideration or for a consideration per share less than the applicable Series F Conversion Price, then with respect to any such issuance, the Series F Conversion Price as in effect immediately prior to each such issuance shall forthwith be lowered to a price equal to the issuance, conversion, exchange or exercise price, as applicable, of any such securities so issued. Notwithstanding anything herein to the contrary, this Section 7.1.3. shall not apply until receipt of the Shareholder Approval.

7.2. Notices.

7.2.1. Immediately upon any adjustment of the Series F Conversion Rate and Series F 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 6.2.5.

7.2.2. 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.

7.2.3. 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.

8. Optional Repurchase. Commencing upon the date Shareholder Approval is obtained, the Corporation will have the option of repurchasing the shares of Series F Preferred Stock, in whole or in part, by paying to the Holder a sum of money in cash equal to (a) the number of shares of Series F Preferred Stock then held by such Holder multiplied by the aggregate Stated Value of such shares of Series F Preferred Stock plus (b) any other amounts due to the Holder pursuant to the terms of this Certificate of Designation (the "Repurchase Amount"). The Corporation's election to exercise its right to repurchase shares of Series F Preferred Stock must be by notice in writing ("Repurchase Notice"). The Repurchase Notice shall specify the date for such optional repurchase (the "Repurchase Payment Date"), which date shall be thirty (30) days after Holder receives the Repurchase Notice. On the Repurchase Payment Date, the Repurchase Amount, less any cash portion of the Redemption Amount against which the Holder has permissibly exercised its conversion rights, shall be paid to the Holder in immediately available funds.

9. Status of Converted Stock. In the event any shares of Series F 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.

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 F Convertible Preferred Stock Certificates representing the Series F 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 F 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 F 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 F 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 F 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 F 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 F 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 F 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 F 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 F 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 F Convertible Preferred Stock. A Holder may assign some or all of the Series F 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 F 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 F Convertible Preferred Stock, in which the Corporation shall record the name, address and email address of the persons in whose name the Series F 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 F 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 F 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 F Convertible Preferred Stock, such Series F 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.

18. Waiver and Amendment. Any of the rights, powers, preferences and other terms of the Series F Convertible Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series F Convertible Preferred Stock by the affirmative written consent or vote of the holders of at least 50 % of the shares of Series F 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 8th day of July, 2019.

XPRESSPA GROUP, INC.

By: _____

Name: Douglas Satzman

Title: Chief Executive Officer

EXHIBIT A

XPRESSPA GROUP, INC.

The undersigned hereby elects to convert the number of shares of Series F Convertible Preferred Stock, par value \$0.01 per share (the “**Series F 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 F Convertible Preferred Stock to be converted: _____

Stock certificate no(s). of Series F Convertible Preferred Stock to be converted: _____

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Series F Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series F 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): _____

CERTIFICATE OF ELIMINATION
of
SHARES OF SERIES B CONVERTIBLE PREFERRED STOCK
of
XPRESSPA GROUP, INC.

Pursuant to the provisions of Section 151 (g) of the General Corporation Law of the State of Delaware, it is hereby certified that:

1. The name of the corporation (hereinafter referred to as the "Corporation") is XpresSpa Group, Inc., a Delaware corporation.

2. The designation of the series of shares of stock of the Corporation to which this certificate relates is Series B convertible preferred stock, par value \$0.01 per share (hereinafter, the "Series B Preferred Stock").

3. The voting powers, designations, preferences, and the relative, participating, optional, or other rights, and the qualifications, limitations, and restrictions of the shares of Series B Preferred Stock were provided for in a resolution adopted by the Board of Directors of the Corporation pursuant to authority expressly vested in it by the provisions of the Certificate of Incorporation of the Corporation. A certificate setting forth the said resolution (the "Certificate of Designation, Preferences, Rights and Limitations of Series B Convertible Preferred Stock") has been heretofore filed with the Secretary of State of the State of Delaware pursuant to the provisions of Section 151(g) of the General Corporation Law of the State of Delaware.

4. The Board of Directors of the Corporation has adopted the following resolution:

RESOLVED, that 1,604,167 of the 1,609,167 authorized shares of the Series B Preferred Stock of the Corporation have been issued;

RESOLVED FURTHER, that none of the 1,609,167 authorized shares of the Series B Preferred Stock previously designated and issued pursuant to that certain Certificate of Designation, Preferences, Rights and Limitations of Series B Convertible Preferred Stock (the "Series B Certificate of Designation") remain outstanding as of the date hereof;

RESOLVED FURTHER, that none of the authorized shares of the Corporation's Series B Preferred Stock shall be issued subject to the Series B Certificate of Designation after the date hereof;

RESOLVED FURTHER, that it is advisable pursuant to Section 151(g) of the Delaware General Corporation Law to reduce the number of authorized shares of the Corporation's Series B Preferred Stock to zero (0), which represents the number of shares of the Corporation's Series B Preferred stock that is currently issued and outstanding; and

RESOLVED FURTHER, that the proper officers of the Corporation be and hereby are authorized and directed to file a certificate setting forth this resolution with the Secretary of State of the State of Delaware pursuant to the provisions of Section 151(g) of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned being a duly authorized officer of the Corporation, does file this Certificate of Elimination, hereby declaring and certifying that the facts stated herein are true and accordingly has hereunto set his hand this 8th day of July, 2019.

XPRESSPA GROUP, INC.
a Delaware Corporation

By: _____
Name: Douglas Satzman
Title: Chief Executive Officer

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

Original Due Date: **May 31, 2022**

Principal Amount: \$2,500,000

**UNSECURED CONVERTIBLE NOTE
DUE MAY 31, 2022**

THIS CONVERTIBLE NOTE is a duly authorized and validly issued Note of **XPRESSPA GROUP, INC.**, a Delaware corporation, (the "Borrower"), having its principal place of business at 780 Third Avenue, 12th Floor, New York, NY 10017, due **May 31, 2022** (the "Note").

FOR VALUE RECEIVED, Borrower promises to pay to Calm.com, Inc., a Delaware corporation, or its registered assigns (the "Holder"), with an address at: 77 Geary Street, 3rd Floor, San Francisco, CA 94108, or shall have paid pursuant to the terms hereunder, the principal sum of **two million five hundred thousand Dollars (\$2,500,000)** on **May 31, 2022** (the "Maturity Date") or such earlier date as this Note is required or permitted to be repaid as provided hereunder, and to pay interest, if any, to the Holder on the aggregate unconverted and then outstanding principal amount of this Note in accordance with the provisions hereof.

This Note is subject to the following additional provisions:

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

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

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

“Base Conversion Price” shall have the meaning set forth in Section 5(b).

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

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

“Change of Control Transaction” means, other than by means of conversion or exercise of the Note and the Securities issued together with the Note, the occurrence after the date hereof of any of (a) an acquisition after the date hereof by an individual or legal entity or “group” (as described in Rule 13d-5(b)(1) promulgated under the Exchange Act) of effective control (whether through legal or beneficial ownership of capital stock of Borrower, by contract or otherwise) of in excess of 50% of the voting securities of Borrower, (b) Borrower merges into or consolidates with any other Person, or any Person merges into or consolidates with Borrower and, after giving effect to such transaction, the stockholders of Borrower immediately prior to such transaction own less than 50% of the aggregate voting power of Borrower or the successor entity of such transaction, (c) Borrower sells or transfers all or substantially all of its assets to another Person and the stockholders of Borrower immediately prior to such transaction own less than 50% of the aggregate voting power of the acquiring entity immediately after the transaction, (d) a replacement at one time or within a three year period of more than one-half of the members of the Board of Directors which is not approved by a majority of those individuals who are members of the Board of Directors on the Original Issue Date (or by those individuals who are serving as members of the Board of Directors on any date whose nomination to the Board of Directors was approved by a majority of the members of the Board of Directors who are members on the date hereof), or (e) the execution by Borrower of an agreement to which Borrower is a party or by which it is bound, providing for any of the events set forth in clauses (a) through (d) above.

“Conversion” shall have the meaning ascribed to such term in Section 4.

“Conversion Date” shall have the meaning set forth in Section 4(a).

“Conversion Price” shall have the meaning set forth in Section 4(b).

“Conversion Shares” means, collectively, the shares of Series E Preferred Stock issuable upon conversion of this Note in accordance with the terms hereof.

“Dilutive Issuance” shall have the meaning set forth in Section 5(e).

“Equity Conditions” means, during the period in question, (a) Borrower shall have duly honored all conversions scheduled to occur or occurring by virtue of one or more Notices of Conversion of the applicable Holder on or prior to the dates so requested or required, if any, (b) Borrower shall have paid all liquidated damages and other amounts owing to the applicable Holder in respect of this Note and the other Transaction Documents, (c) (i) there is an effective registration statement pursuant to which the Holders are permitted to utilize the prospectus thereunder to resell all of the Underlying Common Shares (and Borrower believes, in good faith, that such effectiveness will continue uninterrupted for the foreseeable future), or (ii) all of the Underlying Common Shares (and shares issuable in lieu of cash payments of interest) may be resold pursuant to Rule 144 without volume or manner-of-sale restrictions or current public information requirements as confirmed by counsel to Borrower in a written opinion letter to such effect, addressed and acceptable to the Borrower’s Transfer Agent and the affected Holders, (d) the Common Stock is trading on the Nasdaq Capital Market and all of the shares issuable pursuant to the Transaction Documents are listed or quoted for trading on such Trading Market (and Borrower believes, in good faith, that trading of the Common Stock on a Trading Market will continue uninterrupted for the foreseeable future), (e) there is a sufficient number of authorized, but unissued and otherwise unreserved, shares of Series E Preferred Stock and Common Stock for the issuance of all of the shares then issuable pursuant to the Transaction Documents, (f) an Event of Default has not occurred, whether or not such Event of Default has been cured (other than an Event of Default set forth in clause (xv) of the definition of Event of Default which has been cured), (g) there is no existing event which, with the passage of time or the giving of notice, would constitute an Event of Default, (h) there has been no public announcement of a pending or proposed Fundamental Transaction or Change of Control Transaction that has not been consummated, (i) the applicable Holder is not in possession of any information provided by Borrower that constitutes, or may constitute, material non-public information, (j) the Shareholder Approval has been obtained, and (k) a Public Information Failure is not pending.

“Event of Default” shall have the meaning set forth in Section 8(a).

“Fundamental Transaction” shall have the meaning set forth in Section 5(d).

“Interest Payment Date” shall have the meaning set forth in Section 2(a).

“Mandatory Default Amount” means the sum of (a) the greater of (i) the outstanding principal amount of this Note divided by the Conversion Price on the date the Mandatory Default Amount is either (A) demanded (if demand or notice is required to create an Event of Default) or otherwise due or (B) paid in full, whichever has a lower Conversion Price, multiplied by the VWAP on the date the Mandatory Default Amount is either (x) demanded (if demand or notice is required to create an Event of Default) or otherwise due or (y) paid in full, whichever has a higher VWAP, or (ii) 120% of the outstanding principal amount of this Note and (b) all other amounts, costs, expenses and liquidated damages due in respect of this Note.

“New York Courts” shall have the meaning set forth in Section 10(d).

“Note Register” shall have the meaning set forth in Section 2(c).

“Notice of Conversion” shall have the meaning set forth in Section 4(a).

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

“Per Common Share Conversion Price” means \$2.00.

“Permitted Indebtedness” means (a) any unsecured liabilities for borrowed money or amounts owed ranking *pari passu* or junior to this Note not in excess of \$1,000,000 in the aggregate (other than trade accounts payable incurred in the ordinary course of business), (b) 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 Borrower’s consolidated balance sheet (or the notes thereto) not affecting more than \$1,000,000 in the aggregate, except guaranties, endorsements and other contingent obligations in respect of letters of credit, bank guarantees or similar instruments in the ordinary course of business relating to leases which shall not be subject to the \$1,000,000 threshold set forth in this clause (b) above; (c) the present value of any lease payments due under leases entered into in the ordinary course of business required to be capitalized in accordance with GAAP; (d) purchase money indebtedness incurred after the date of this Agreement in connection with the acquisition of capital assets up to the purchase price of such assets; (e) any liabilities for borrowed money which in the aggregate with all Indebtedness under this clause (e) and clause (f) does not exceed \$11,000,000 in aggregate principal amount, and which, for the avoidance of doubt, shall include the Senior Indebtedness; *provided*, that any Indebtedness incurred under this clause (e) after the date hereof shall be unsecured and shall rank *pari passu* or junior to this Note; (f) any liabilities for borrowed money secured by the credit card receipts of the location or locations to which American Express or any other nationally recognized credit company extends credit, which shall not in the aggregate with all Indebtedness under clause (e) and this clause (f) exceed \$11,000,000 in aggregate principal amount; (g) Indebtedness incurred in connection with the construction and development of new XpresSpa locations, provided that (i) such Indebtedness is secured only by the assets of the Subsidiary which owns and/or operates such location and only in the assets of such location, and (ii) the Indebtedness is not guaranteed by the Borrower or any other Subsidiary of the Borrower; and (h) Indebtedness incurred in connection with the Purchase Agreement and this Note.

“Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Borrower) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Borrower’s business, such as carriers’, warehousemen’s and mechanics’ Liens, statutory landlords’ Liens, and other similar Liens arising in the ordinary course of the Borrower’s business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of Borrower and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Liens, and (c) Liens existing on the date hereof incurred in connection with Permitted Indebtedness under clause (b) and clause (e) thereunder, (d) Liens incurred in connection with Permitted Indebtedness under clause (c) thereunder provided that such Liens are not secured by assets of the Borrower or its Subsidiaries other than the assets so acquired or leased, (e) Liens incurred in connection with Permitted Indebtedness under clause (f) of the definition of “Permitted Indebtedness,” provided that such Liens are not secured by assets of the Borrower or its Subsidiaries other than the credit card receipts of the location or locations to which a credit card company extends credit, (f) Liens incurred in connection with the construction, development and/or remodeling of existing XpresSpa locations, provided that such Liens only relate to the assets of the Subsidiary which owns and/or operates such location and only in the assets of such location with respect to such construction, development and/or remodeling, (g) Liens to the extent arising solely from the filing of protective Uniform Commercial Code financing statements in respect of equipment leased to the Borrower or any Subsidiary in the ordinary course of its business under true, as opposed to finance, leases, only up to the value of such leased equipment, (h) Liens securing the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds, and other obligations of like nature, in each case in the ordinary course of business, (i) any interest or title of a lessor of real property secured by a lessor’s interest in such real property under any lease, (j) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business, and (k) Liens incurred in connection with Permitted Indebtedness under clause (g) of the definition of “Permitted Indebtedness,” provided that such Liens are not secured by assets of the Borrower or its Subsidiaries other than the assets of the Subsidiary which owns such location and only in the assets of such location.

“Purchase Agreement” means the Securities Purchase Agreement, dated as of July 8, 2019 among Borrower and the original Holder, as amended, modified or supplemented from time to time in accordance with its terms.

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

“Share Delivery Date” shall have the meaning set forth in Section 4(c)(ii).

“Series E COD” means the Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock, as amended.

“Stated Value” means the Stated Value of the Series E Preferred Stock and shall have the meaning set forth in the Series E COD. For the avoidance of doubt, as of the date hereof, the Stated Value is equal to \$3.10 per share.

“Subsequent Financing” means the closing of an offering of the Borrower’s Common Stock, preferred stock, other equity or debt, in one or more tranches upon which the Borrower receives gross cash proceeds of ten million dollars or more.

“Successor Entity” shall have the meaning set forth in Section 5(e).

“Trading Day” means a day on which the principal Trading Market of the Borrower is open for trading.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTC Bulletin Board, the OTCQB, or the OTCQX (or any successors to any of the foregoing).

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if any of the NASDAQ markets or exchanges is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the OTC Bulletin Board, (c) if the Common Stock is not then listed or quoted for trading on the OTC Bulletin Board and if prices for the Common Stock are then reported on the OTCQX, OTCQB or OTC Pink Marketplace maintained by the OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the volume weighted average price of the Common Stock on the first such facility (or a similar organization or agency succeeding to its functions of reporting prices), or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to Borrower, the fees and expenses of which shall be paid by Borrower.

Section 2. Interest, Payment and General Provisions.

(a) Interest in Cash or in Kind. Holder shall be entitled to receive, and Borrower shall pay, cumulative interest on the outstanding principal amount of this Note compounded monthly at the annual rate of five percent (5%) (as subject to increase as set forth in this Note) from the Original Issue Date through the Maturity Date. Interest shall be payable in arrears on the last day of each February, May, August and November during the period beginning on the Original Issue Date and ending on, and including, the Maturity Date (each an "Interest Payment Date"), with the first Interest Payment Date being August 31, 2019. Interest shall be payable on each Interest Payment Date in cash, or at the election of the Borrower, such interest may be paid in duly authorized, validly issued, fully paid and non-assessable shares of Series E Preferred Stock, or a combination thereof (the amount to be paid in shares of Series E Preferred Stock, the "Interest Share Amount"). If any Interest Payment Date is not a Trading Day, the applicable payment shall be due on the next succeeding Trading Day. The Interest Share Amount will be determined by dividing the amount of interest on the subject Interest Payment Date by the then applicable Conversion Price. The Holder shall have the same rights and remedies with respect to the delivery of any such Interest Share Amount as if such shares were being issued pursuant to a voluntary conversion pursuant to Section 4(a). Borrower must give Holder not less than five (5) Trading Days' notice prior to an Interest Payment Date of Borrower's intention to pay interest as an Interest Share Amount in lieu of cash. Borrower may not pay interest by delivery of an Interest Share Amount without the consent of the Holder in the event that the Equity Conditions are not in effect on each day commencing ten (10) Trading Days prior to the relevant Interest Payment Date through the date the Interest Share Amount is delivered to the Holder or if a Public Information Failure has occurred during such period.

(b) Maturity Date Payment. On the Maturity Date, the Holder shall surrender the Note to Borrower and Borrower shall pay to the Holder an amount in cash representing the outstanding principal balance of this Note *plus* any accrued and unpaid interest *plus* any other amounts owing under this Note other than principal and interest, including fees and damages, if any.

(c) Payment Grace Period. The Borrower shall not have any grace period to pay any monetary amounts due under this Note.

(d) Conversion Privileges. The Conversion Rights set forth in Section 4 shall remain in full force and effect immediately from the date hereof and until the Note is paid in full regardless of the occurrence of an Event of Default. This Note shall be payable in full on the Maturity Date, unless previously converted into Common Stock in accordance with Section 4 hereof.

(e) Application of Payments. Interest on this Note shall be calculated on the basis of a 360-day year and actual number of days elapsed. Payments made in connection with this Note shall be applied first to amounts due hereunder other than principal and interest, thereafter to interest and finally to principal.

(f) Manner and Place of Payment. Principal and interest on this Note and other payments in connection with this Note shall be payable at the Holder's offices as designated above in lawful money of the United States of America in immediately available funds without set-off, deduction or counterclaim. Upon assignment of the interest of Holder in this Note, Borrower shall instead make its payment pursuant to the assignee's instructions upon receipt of written notice thereof. Except as set forth herein, this Note may not be prepaid or mandatorily converted without the consent of the Holder.

Section 3. Registration of Transfers and Exchanges.

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

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

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

Section 4. Conversion.

(a) Voluntary Conversion. At any time after the Original Issue Date until this Note is no longer outstanding, this Note, including interest accrued hereon, shall be convertible, in whole or in part, into shares of Series E Preferred Stock at the option of the Holder, at any time and from time to time. The Holder shall effect conversions by delivering to Borrower a Notice of Conversion, the form of which is attached hereto as Annex A (each, a "Notice of Conversion"), specifying therein the principal amount of this Note and accrued interest, if any, to be converted and the date on which such conversion shall be effected (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. To effect conversions hereunder, the Holder shall not be required to physically surrender this Note to Borrower unless the entire principal amount of this Note has been so converted. Conversions hereunder shall have the effect of lowering the outstanding principal amount of this Note in an amount equal to the applicable conversion. The Holder and Borrower shall maintain records showing the principal amount(s) converted and the date of such conversion(s). Borrower may deliver an objection to any Notice of Conversion within one (1) Business Day of delivery of such Notice of Conversion. In the event of any dispute or discrepancy, the records of the Holder shall be controlling and determinative in the absence of manifest error. **The Holder, and any assignee by acceptance of this Note, acknowledges and agrees that, by reason of the provisions of this paragraph, following conversion of a portion of this Note, the unpaid and unconverted principal amount of this Note may be less than the amount stated on the face hereof.**

(b) Conversion Price. The conversion price for the principal and interest, if any, in connection with voluntary conversions by the Holder shall be equal to \$3.10, subject to adjustment herein (the "Conversion Price").

(c) Mechanics of Conversion.

(i) Conversion Shares Issuable Upon Conversion of Principal Amount. The number of Conversion Shares issuable upon a conversion hereunder shall be determined by the quotient obtained by dividing (x) the outstanding principal amount of this Note to be converted plus accrued interest, if any, elected by the Holder to be converted by (y) the Conversion Price.

(ii) Delivery of Certificate Upon Conversion. Not later than two (2) Trading Days after each Conversion Date (the “Share Delivery Date”), Borrower shall deliver, or cause to be delivered, to the Holder a certificate or certificates (or book entry entitlements recorded in the books and records of the Transfer Agent) representing the number of Conversion Shares being acquired upon such conversion of all or part of this Note.

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

(iv) Obligation Absolute; Partial Liquidated Damages. Borrower’s obligations to issue and deliver the Conversion Shares upon conversion of this Note in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to Borrower or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of Borrower to the Holder in connection with the issuance of such Conversion Shares; *provided, however*, that such delivery shall not operate as a waiver by Borrower of any such action Borrower may have against the Holder. In the event the Holder of this Note shall elect to convert any or all of the outstanding principal amount hereof, Borrower may not refuse conversion based on any claim that the Holder or anyone associated or affiliated with the Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and or enjoining conversion of all or part of this Note shall have been sought and obtained, and Borrower posts a surety bond for the benefit of the Holder in the amount of 150% of the outstanding principal amount of this Note, which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to the Holder to the extent it obtains judgment. In the absence of such injunction, Borrower shall issue Conversion Shares or, if applicable, cash, upon a properly noticed conversion. If Borrower fails for any reason to deliver to the Holder such certificate or certificates (or book entry entitlements) pursuant to Section 4(c)(ii)) by the Share Delivery Date, Borrower shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of principal amount being converted, \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth (5th) Trading Day after such liquidated damages being to accrue) for each Trading Day after such Share Delivery Date until such certificates are delivered or Holder rescinds such conversion. Nothing herein shall limit Holder’s right to pursue actual damages or declare an Event of Default pursuant to Section 8 hereof for Borrower’s failure to deliver Conversion Shares within the period specified herein and the Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit the Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(v) Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. In addition to any other rights available to the Holder, if Borrower fails for any reason to deliver to the Holder such certificate or certificates by the Share Delivery Date pursuant to Section 4(c)(ii), and if after such Share Delivery Date the Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder or Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of Underlying Common Shares in respect of Conversion Shares which the Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then Borrower shall (A) pay in cash to the Holder (in addition to any other remedies available to or elected by the Holder) the amount, if any, by which (x) the Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that the Holder was entitled to receive from the conversion at issue (after giving effect to the further conversion of the Conversion Shares into shares of Common Stock in accordance with the terms of the Series E Preferred Stock) multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the Holder, either reissue (if surrendered) this Note in a principal amount equal to the principal amount of the attempted conversion (in which case such conversion shall be deemed rescinded) or deliver to the Holder the number of shares of Series E Preferred Stock that would have been issued if Borrower had timely complied with its delivery requirements under Section 4(c)(ii). For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of this Note with respect to which the actual sale price of the Underlying Common Shares in respect of Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, Borrower shall be required to pay the Holder \$1,000. The Holder shall provide Borrower written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of Borrower, evidence of the amount of such loss. Nothing herein shall limit 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 Borrower's failure to timely deliver certificates representing shares of Common Stock upon conversion of this Note as required pursuant to the terms hereof.

(vi) Reservation of Shares Issuable Upon Conversion. Borrower covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Series E Preferred Stock for the sole purpose of issuance upon conversion of this Note as herein provided, and shares of Common Stock for the sole purpose of issuance upon further conversion of the Conversion Shares in accordance with the terms of the Series E Preferred Stock, in each case, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder, not less than 100% of the aggregate number of shares of the Series E Preferred Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 5) upon the conversion of the then outstanding principal amount of this Note *plus* interest which has accrued and would accrue on such principal amount assuming such principal amount was not converted through the Maturity Date. Borrower covenants that all shares of Series E Preferred Stock and Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

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

(viii) Transfer Taxes and Expenses. The issuance of certificates (or book entry entitlements) for shares of the Series E Preferred Stock on conversion of this Note 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, Borrower shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of this Note so converted and Borrower 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 Borrower the amount of such tax or shall have established to the satisfaction of Borrower that such tax has been paid. Borrower shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion.

Section 5. Certain Adjustments.

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

(b) Subsequent Equity Sales. In addition to the reductions of the Conversion Price described in Section 4(b)Section 5(a), if, at any time while this Note is outstanding, the Borrower or any Subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire Common Stock at an effective price per share that is lower than the Per Common Share Conversion Price (such lower price, the “Base Conversion Price” and such issuances, collectively, a “Dilutive Issuance”) (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive Common Stock at an effective price per share that is lower than the Per Common Share Conversion Price, such issuance shall be deemed to have occurred for less than the Per Common Share Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price times 1.55 and the Per Common Share Conversion Price shall be reduced to the Base Conversion Price, in each case subject to adjustment for reverse and forward stock splits and the like. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 5(b) in respect of an Exempt Issuance. If the Borrower enters into a Variable Rate Transaction despite the prohibition set forth in the Purchase Agreement, the Borrower shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. Notwithstanding anything herein to the contrary, this Section 5(b) shall not apply until receipt of the Shareholder Approval pursuant to Nasdaq Listing Rule 5635(d) unless the Borrower is not then subject to Nasdaq Listing Rule 5635(d). The Borrower shall notify the Holder in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 5(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the “Dilutive Issuance Notice”). For purposes of clarification, whether or not the Borrower provides a Dilutive Issuance Notice pursuant to this Section 5(b), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Conversion Price in the Notice of Conversion.

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 5(a) and (b) above, if at any time Borrower grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the “Purchase Rights”), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note and further conversion of such Conversion Shares into Common Stock (without regard to any limitations on conversion hereof) 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 shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(d) Pro Rata Distributions. During such time as this Note is outstanding, if Borrower shall declare or make any dividend whether or not permitted, or makes any other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “Distribution”), at any time after the issuance of this Note, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note and further conversion of such Conversion Shares into Common Stock (without regard to any limitations on conversion hereof) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

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

(f) Voluntary Adjustment by the Borrower. The Borrower may at any time during the term of this Note reduce the then current Conversion Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company. Notwithstanding anything herein to the contrary, this Section 5(f) shall not apply until receipt of the Shareholder Approval pursuant to Nasdaq Listing Rule 5635(d) unless the Borrower is not then subject to Nasdaq Listing Rule 5635(d).

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

(h) Notice to the Holder.

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

(ii) Notice to Allow Conversion by Holder. If (A) Borrower shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) Borrower shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) Borrower shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of Borrower shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which Borrower is a party, any sale or transfer of all or substantially all of the assets of Borrower, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) Borrower shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of Borrower, then, in each case, Borrower shall cause to be filed at each office or agency maintained for the purpose of conversion of this Note, and shall cause to be delivered to the Holder at its last address as it shall appear upon the Note Register, at least ten (10) Trading Days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding Borrower or any of the Subsidiaries, Borrower shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert this Note during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(i) Nasdaq Approval. Until the Borrower receives the approval of its shareholders for the issuance of the Conversion Shares pursuant to Nasdaq Listing Rule 5635(d) and for so long as such requirement is applicable to the Borrower, the Borrower may not issue any Interest Share Amount in violation of such Listing Rule nor additional Conversion Shares resulting from a Dilutive Issuance in excess of the amount of Conversion Shares issuable prior to the reduction of the Conversion Price due to the Dilutive Issuance adjustment.

Section 6. Prepayment and Redemption. This Note may not be prepaid, redeemed or mandatorily converted without the consent of the Holder except as follows:

(a) Mandatory Repayment Offer. In connection with a Subsequent Financing conducted pursuant to a Form S-3 registration statement, Borrower shall, on a Trading Day, at least two (2) hours prior to Borrower's receipt of the proceeds of such Subsequent Financing, offer in writing (the "Offer Notice") to the Holder the right to receive out of the net proceeds of such Subsequent Financing to be applied in satisfaction of up to 100% of the then-outstanding Principal Amount and accrued but unpaid interest designated by Holder. In connection with a Subsequent Financing not involving a Form S-3 registration statement, Borrower shall provide the Offer Notice not later than five (5) Trading Days before the closing of the Subsequent Financing. Holder must notify the Borrower within four (4) Trading Days of receipt of the Offer Notice if such Holder elects to exercise the right to receive repayment out of the Subsequent Financing net proceeds. If Holder's notice to elect to receive payment is received at least one (1) Trading Day prior to the closing of the Subsequent Financing, the amount required to be paid to Holder must be paid to Holder not later than the closing of the Subsequent Financing. If Holder's notice to receive payment is not given to Borrower at least one (1) Trading Day prior to the closing of the Subsequent Financing, then payment must be made to the Holder not later than five (5) Trading Days after the closing of the Subsequent Financing.

(b) Optional Prepayment. If the VWAP of the Common Stock is equal to or greater than one hundred and fifty percent (150%) of the Conversion Price then in effect for at least 20 consecutive Trading Days, including the Trading Day immediately preceding the date on which Borrower provides the related Notice of Redemption (as defined below), Borrower will have the option of prepaying, in whole but not in part, the outstanding Principal Amount of this Note ("Optional Redemption") by paying to the Holder a sum of money in cash equal to one hundred and ten percent (110%) of the Principal Amount to be redeemed, together with accrued but unpaid interest thereon, if any, and any and all other sums due, accrued or payable to the Holder arising under this Note through the Redemption Payment Date, as defined below (the "Redemption Amount"). The Borrower's election to exercise its right to prepay this Note must be by notice in writing ("Notice of Redemption"). The Notice of Redemption shall specify the date for such Optional Redemption (the "Redemption Payment Date"), which date shall be a date certain not sooner than ten (10) Trading Days after Holder receives the Notice of Redemption (the "Redemption Period"). In addition to the VWAP condition specified in the first sentence of this clause (b), a Notice of Redemption, if given, must be given within two Trading Days following thirty (30) consecutive Trading Days during which all of the Equity Conditions have been satisfied each day (other than the Equity Conditions set forth in clause (c) thereunder). A Notice of Redemption shall not be effective with respect to any portion of the Principal Amount for which the Holder has previously delivered an election to convert, nor for conversions initiated or made by the Holder during the Redemption Period. On the Redemption Payment Date, the Redemption Amount, less any cash portion of the Redemption Amount against which the Holder has exercised its conversion rights, shall be paid to the Holder in immediately available funds. In the event the Borrower fails to pay the Redemption Amount on the Redemption Payment Date as set forth herein, then (i) such Notice of Redemption will, at the election of the Holder, be null and void, (ii) the Borrower will not have the right to deliver another Notice of Redemption, and (iii) Borrower's failure may be deemed by Holder to be a non-curable Event of Default. In the event the Equity Conditions cease to be satisfied prior to the payment of the Redemption Amount, the Holder may, upon written notice to the Borrower at any time prior to the payment of the Redemption Amount, cancel the Notice of Redemption.

Section 7. Negative Covenants. As long as any portion of this Note remains outstanding, unless the holders of at least 51% in principal amount of the then outstanding Notes shall have otherwise given prior written consent. Borrower shall not, and shall not permit any of the Subsidiaries to, directly or indirectly:

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

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

(c) other than in connection with a reverse stock split approved by the Borrower's stockholders, amend its charter documents, including, without limitation, its certificate of incorporation and bylaws, in any manner that materially and adversely affects any rights of the Holder;

(d) repay, repurchase or offer to repay, repurchase or otherwise acquire more than a *de minimis* number of shares of its Common Stock or Common Stock Equivalents other than at a *de minimis* price or as to the Conversion Shares as permitted or required under the Transaction Documents;

(e) redeem, defease, repurchase, repay or make any payments in respect of, by the payment of cash or cash equivalents (in whole or in part, whether by way of open market purchases, tender offers, private transactions or otherwise), all or any portion of any Indebtedness (other than the Note and with respect to the Senior Indebtedness only with funds derived from clause (f) of the definition of Permitted Indebtedness or with proceeds received from the sale of equity), whether by way of payment in respect of principal of (or premium, if any) or interest on, such Indebtedness, the foregoing restriction shall also apply to Permitted Indebtedness from and after the occurrence of an Event of Default; *provided* that after May 31, 2020, Borrower may make regularly scheduled payments of interest and principal on the Rockmore Indebtedness in cash, if then-required to do so under the documents governing the Rockmore Indebtedness;

(f) declare or make any dividend or other distribution of its assets or rights to acquire its assets to holders of shares of Common Stock, by way of return of capital or otherwise including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, liquidation, distribution, preferential payments in connection with any securities or debt issuances, corporate rearrangement, scheme of arrangement or other similar transaction;

(g) issue any Common Stock or Common Stock Equivalents prohibited by Section 4.13 of the Purchase Agreement;

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

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

Section 8. Events of Default.

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

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

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

(iii) a default or event of default (subject to any grace or cure period provided in the applicable agreement, document or instrument) shall occur under (A) any of the Transaction Documents, including but not limited to, failure to strictly comply with the provisions of the Transaction Documents, or (B) any other material agreement, lease, document or instrument to which Borrower or any Subsidiary is obligated (and not covered by clause (vi) below), which in the case of subsection (B) would reasonably be expected to have a Material Adverse Effect;

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

(v) Borrower or any Subsidiary shall be subject to a Bankruptcy Event;

(vi) Borrower or any Subsidiary shall default on all or any part of the Senior Indebtedness and the maturity date of such Senior Indebtedness shall have been accelerated, or shall default on any of its obligations under any mortgage, credit agreement or other facility, indenture agreement, factoring agreement or other instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness for borrowed money or money due under any long term leasing or factoring arrangement that (a) involves an obligation greater than \$100,000, whether such indebtedness now exists or shall hereafter be created, and (b) results in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable;

(vii) Borrower shall be a party to any Change of Control Transaction or Fundamental Transaction or shall agree to sell or dispose of all or in excess of 50% of its assets in one transaction or a series of related transactions (whether or not such sale would constitute a Change of Control Transaction);

(viii) [Reserved];

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

(x) the occurrence of an Event of Default under any denomination or subdivision of this Note transferred to any other Person pursuant to Section 3;

(xi) any monetary judgment, writ or similar final process shall be entered or filed against Borrower, any subsidiary or any of their respective property or other assets for more than \$100,000, and such judgment, writ or similar final process shall remain unvacated, unbonded or unstayed for a period of 90 calendar days;

(xii) any dissolution, liquidation or winding up by Borrower or a material Subsidiary of a substantial portion of their business;

(xiii) cessation of operations by Borrower or a material Subsidiary;

(xiv) the failure by Borrower or any material Subsidiary to maintain any material intellectual property rights, personal, real property, equipment, leases or other assets which are necessary to conduct its business (whether now or in the future) and such breach is not cured with twenty (20) days after written notice to the Borrower from the Holder, it being understood and agreed that the Borrower's intellectual property rights, personal, real property, equipment, leases or other assets related to its legacy intellectual property business are not material for these purposes;

(xv) an event resulting in the Common Stock no longer being listed or quoted on a Trading Market;

(xvi) a Commission or judicial stop trade order or suspension from the Borrower's principal Trading Market;

(xvii) the restatement after the date hereof of any financial statements filed by the Borrower with the Commission for any date or period from two years prior to the Original Issue Date and until this Note is no longer outstanding, if the result of such restatement would, by comparison to the unrestated financial statements, have constituted a Material Adverse Effect. For the avoidance of doubt, any restatement related to new accounting pronouncements shall not constitute a default under this Section;

(xviii) [Reserved];

(xix) a failure by Borrower to notify Holder of any material event of which Borrower is obligated to notify Holder pursuant to the terms of this Note or any other Transaction Document;

(xx) a default by the Borrower of a material term, covenant, warranty or undertaking of any other agreement to which the Borrower and Holder are parties, or the occurrence of an event of default under any such other agreement to which Borrower and Holder are parties which is not cured after any required notice and/or cure period; or

(xxi) any material provision of any Transaction Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the Borrower, or the validity or enforceability thereof shall be contested by Borrower, or a proceeding shall be commenced by Borrower or any governmental authority having jurisdiction over Borrower or Holder, seeking to establish the invalidity or unenforceability thereof, or Borrower shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document

The foregoing notwithstanding, the occurrence of a Public Information Failure is not an Event of Default.

In the event more than one grace, cure or notice period is applicable to an Event of Default, then the shortest grace, cure or notice period shall be applicable thereto.

(b) Remedies Upon Event of Default, Fundamental Transaction and Change of Control Transaction. If any Event of Default or a Fundamental Transaction or a Change of Control Transaction occurs, the outstanding principal amount of this Note, liquidated damages and other amounts owing in respect thereof through the date of acceleration, shall become, at the Holder's election, immediately due and payable in cash at the Mandatory Default Amount. Commencing on the Maturity Date and also five (5) days after the occurrence of any Event of Default interest on this Note shall accrue at an interest rate equal to the lesser of 18% per annum or the maximum rate permitted under applicable law. Upon the payment in full of the Mandatory Default Amount, the Holder shall promptly surrender this Note to or as directed by Borrower. In connection with such acceleration described herein, the Holder need not provide, and Borrower hereby waives, any presentment, demand, protest or other notice of any kind, and the Holder may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by Holder at any time prior to payment hereunder and the Holder shall have all rights as a holder of the Note until such time, if any, as the Holder receives full payment pursuant to this Section 8(b). No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 9. [Reserved]

Section 10. Miscellaneous.

(a) Notices. All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be (i) personally served, (ii) deposited in the mail, registered or certified, return receipt requested, postage prepaid, (iii) delivered by reputable air courier service with charges prepaid, or (iv) transmitted by hand delivery, telegram, or electronic mail, addressed as set forth below or to such other address as such party shall have specified most recently by written notice. Any notice or other communication required or permitted to be given hereunder shall be deemed effective (a) upon hand delivery at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received), (b) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, or (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient on a Business Day, and on the next Business Day if sent after normal business hours of the recipient on a non-Business Day, whichever shall first occur. The addresses for such communications shall be: (i) if to Borrower, to: XpresSpa Group, Inc., 780 Third Avenue, 12th Floor, New York, NY 10017, Attn: Douglas Satzman, CEO, email: notices@xpresspagroup.com, with a copy by email only to: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Chrysler Center, 666 3rd Avenue, New York, NY 10017, Attn: Kenneth R. Koch, Esq., email: krkoch@mintz.com, and (ii) if to the Holder, to: Calm.com, Inc., 77 Geary Street, 3rd Floor, San Francisco, CA 94108 or by email to dun@calm.com and legal@calm.com, with an additional copy by email only to (which shall not constitute notice): Davis Polk & Wardwell, Attention: Alan F. Denenberg and Donald K. Lang, 1600 El Camino Real, Menlo Park, CA 94025, email: alan.denenberg@davispolk.com; donald.lang@davispolk.com.

(b) Absolute Obligation. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of Borrower, which is absolute and unconditional, to pay the principal of, liquidated damages and accrued interest, as applicable, on this Note at the time, place, and rate, and in the coin or currency, herein prescribed. This Note is a direct debt obligation of Borrower. This Note ranks *pari passu* with all other Notes now existing (except as the Note may be expressly subordinated to such indebtedness pursuant to Section 11) or hereafter issued under the terms set forth herein.

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

(d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Note shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Note or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Note, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding. **This Note shall be deemed an unconditional obligation of Borrower for the payment of money and, without limitation to any other remedies of Holder, may be enforced against Borrower by summary proceeding pursuant to New York Civil Procedure Law and Rules Section 3213 or any similar rule or statute in the jurisdiction where enforcement is sought. For purposes of such rule or statute, any other document or agreement to which Holder and Borrower are parties or which Borrower delivered to Holder, which may be convenient or necessary to determine Holder's rights hereunder or Borrower's obligations to Holder are deemed a part of this Note, whether or not such other document or agreement was delivered together herewith or was executed apart from this Note.**

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

(f) Severability. If any provision of this Note is invalid, illegal or unenforceable, the balance of this Note shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances.

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

(h) [Reserved]

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

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

(k) Amendment. Unless otherwise provided for hereunder, this Note may not be modified or amended or the provisions hereof waived without the written consent of Borrower and the Holder.

(l) Electronic Signature. In the event that the Borrower's signature is delivered by PDF, electronic signature or other similar electronic means, such signature shall create a valid and binding obligation of the Borrower with the same force and effect as if such signature page were an original thereof.

Section 11. Subordination.

(a) Subordination. The indebtedness evidenced by this Note is subordinate and junior in right of payment to the prior payment in full of any Senior Indebtedness in existence as of the date of this Note. Any Person acquiring any denomination or subdivision of this Note transferred pursuant to Section 3 shall expressly acknowledge and agree to be bound by the subordination provisions of this Section 11.

(b) No Payment on Note if Senior Indebtedness in Default. No payment on account of principal or interest on the Note shall be made unless full payment of amounts then due for principal, premium, if any, sinking funds and interest on all Senior Indebtedness has been made or duly provided for. No payment on account of principal or interest on the Note shall be made if, at the time of such payment or immediately after giving effect thereto, (i) there shall exist a default in the payment of principal, premium, if any, sinking funds or interest with respect to any Senior Indebtedness, or (ii) there shall have occurred an event of default (other than a default in the payment of principal, premium, if any, sinking funds or interest) with respect to any Senior Indebtedness, as defined therein or in the instrument under which the same is outstanding, permitting the holders thereof to accelerate the maturity thereof, and such event of default shall not have been cured or waived or shall not have ceased to exist.

(c) Priority of Senior Indebtedness. In the event of any insolvency or bankruptcy proceedings, and any receivership, liquidation, reorganization under the Federal Bankruptcy Code or any other similar applicable Federal or state law, or other similar proceedings in connection therewith, relative to Borrower or to its creditors, as such, or to its property, and in the event of any proceedings for voluntary liquidation, dissolution or other winding up of Borrower or assignment for the benefit of creditors or any other marshalling of assets of Borrower, whether or not involving insolvency or bankruptcy, then the holders of Senior Indebtedness shall be entitled to receive payment in full of all principal of and premium, if any, and interest on all Senior Indebtedness including interest on such Senior Indebtedness after the date of filing of a petition or other action commencing such proceeding before the Holder is entitled to receive any payment on account of the principal of or interest on the Note, and any payment or distribution of any kind or character which may be payable or deliverable in any such proceedings in respect of the Note, except securities which are subordinate and junior in right of payment to the payment of all Senior Indebtedness then outstanding, shall be paid by the person making such payment or distribution directly to the holders of Senior Indebtedness to the extent necessary to make payment in full of all Senior Indebtedness, after giving effect to any concurrent payment or distribution to the holders of Senior Indebtedness. In the event that any payment or distribution of cash, property or securities shall be received by the Holder in contravention this Section before all Senior Indebtedness is paid in full, or provision made for the payment thereof, such payment or distribution shall be held in trust for the benefit of and shall be paid over to the holders of such Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture under which any instrument evidencing any of such Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay in full all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution to the holders of such Senior Indebtedness.

(d) Borrower to Give Notice of Certain Events; Reliance. Borrower shall give prompt written notice to Holder of any insolvency or bankruptcy proceedings, any receivership, liquidation, reorganization under the Federal Bankruptcy Code or any other similar applicable Federal or state law, or similar proceedings and any proceedings for voluntary liquidation, dissolution or winding up of Borrower within the meaning of this Section. Upon any payment or distribution of assets of Borrower referred to in this Article, Holder shall be entitled to rely conclusively upon a certificate of the receiver, trustee in bankruptcy, liquidation trustee, agent or other person making such payment or distribution, delivered to Holders, for the purpose ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of Borrower, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Section. With respect to the holders of Senior Indebtedness, Holder undertakes to perform or to observe only such covenants and obligation as are specifically set forth in this Section and no implied covenants or obligations with respect to holders of Senior Indebtedness shall be read into this Note against the Holder. Holder does not have any fiduciary duties to holders of Senior Indebtedness.

(e) Subrogation. Subject to the payment in full of all Senior Indebtedness, Holder shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of assets of Borrower made on the Senior Indebtedness until the principal of and interest on the Note shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of Senior Indebtedness of any cash, property or securities to which Holders would be entitled except for the provisions of this Section, and no payment over pursuant to the provisions of this Section to the holders of Senior Indebtedness by Holder shall, as between Borrower, its creditors other than the holders of Senior Indebtedness, and Holder, be deemed to be a payment by Borrower to or on account of Senior Indebtedness, and no payments or distributions to Holder of cash, property or securities payable or distributable to the holders of the Senior Indebtedness to which Holder shall become entitled pursuant to the provisions of this Section, shall, as between Borrower, its creditors other than the holders of Senior Indebtedness, and Holder, be deemed to be a payment by Borrower to Holder of or on account of the Note.

(f) Borrower Obligation to Pay Unconditional. The provisions of this Section are solely for the purpose of defining the relative rights of the holders of Senior Indebtedness on the one hand, and Holder on the other hand, and nothing herein shall impair, as between Borrower and Holder, the obligation of Borrower, which is unconditional and absolute, to pay to the Holder thereof the principal thereof and premium, if any, and interest thereon and any other amounts owing under, if any, in accordance with the terms of the Note nor shall anything herein prevent Holder from exercising all remedies otherwise permitted by applicable law or under the Note upon default under the Note, subject to the rights of holders of Senior Indebtedness under the provisions of this Section to receive cash, property or securities otherwise payable or deliverable to the Holder.

(Signature Pages Follow)

IN WITNESS WHEREOF, Borrower has caused this Note to be signed in its name by an authorized officer as of the 8th day of July, 2019.

XPRESSPA GROUP, INC.

By:

Name: Douglas Satzman

Title: CEO

WITNESS:

ANNEX A

NOTICE OF CONVERSION

The undersigned hereby elects to convert principal under the Convertible Note due May 31, 2022 of XpresSpa Group, Inc., a Delaware corporation (the "Borrower"), into shares of Series E Convertible Preferred Stock (the "Series E Preferred Stock"), of Borrower according to the conditions hereof, as of the date written below. If shares of Series E Preferred Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by Borrower in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

Conversion calculations:

Date to Effect Conversion: _____

Principal Amount of Note to be Converted: \$ _____

Accrued Interest to be Converted, if any: \$ _____

Conversion Price: \$ _____

Number of shares of Series E Preferred Stock to be issued: _____

Signature: _____

Name: _____

Address for Delivery of Series E Preferred Stock Certificates:

[FORM OF CALM WARRANT]

NEITHER THE ISSUANCE AND SALE OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL SELECTED BY THE HOLDER, IN A GENERALLY ACCEPTABLE FORM, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

XPRESSPA GROUP, INC.

WARRANT TO PURCHASE COMMON STOCK

Warrant No.: 2019-E1

Number of Shares of Common Stock: 937,500

Date of Issuance: July 8, 2019 (“**Issuance Date**”)

XpresSpa Group, Inc., a Delaware corporation (the “**Company**”), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CALM.COM, INC., the registered holder hereof or its permitted assigns (the “**Holder**”), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, at any time or times on or after January 8, 2020 (the “**Initial Exercise Date**”), but not after 11:59 p.m., New York time, on the Expiration Date (as defined below), 937,500 fully paid nonassessable shares of Common Stock, subject to adjustment as provided herein (the “**Warrant Shares**”). Except as otherwise defined herein, capitalized terms in this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, this “**Warrant**”) shall have the meanings set forth in Section 18 or as defined in the Securities Purchase Agreement (as defined below). This Warrant represents the Warrants to purchase Common Stock (the “**SPA Warrants**”) issued pursuant to Section 2 of that certain Securities Purchase Agreement, dated as of July 8, 2019 (the “**Subscription Date**”), by and among the Company and Calm.com, Inc. (the “**Buyer**”) (the “**Securities Purchase Agreement**”).

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder at any time or times on or after the Initial Exercise Date and prior to the Expiration Date, in whole or in part, by (i) delivery of a written notice, in the form attached hereto as Exhibit A (the “**Exercise Notice**”), of the Holder’s election to exercise this Warrant and (ii) (A) payment to the Company of an amount equal to the applicable Exercise Price multiplied by the number of Warrant Shares as to which this Warrant is being exercised (the “**Aggregate Exercise Price**”) in cash by wire transfer of immediately available funds or (B) if the provisions of Section 1(d) are applicable, by notifying the Company that this Warrant is being exercised pursuant to a Cashless Exercise (as defined in Section 1(d)). The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares. On or before the first (1st) Trading Day following the date on which the Company has received the Exercise Notice, the Company shall transmit by electronic mail an acknowledgment of confirmation of receipt of the Exercise Notice to the Holder. On or before the second (2nd) Trading Day following the date on which the Company has received the Exercise Notice, so long as the Holder delivers the Aggregate Exercise Price (or notice of a Cashless Exercise) on or prior to the second (2nd) Trading Day following the date on which the Company has received the Exercise Notice (the “**Share Delivery Date**”) (provided that if the Aggregate Exercise Price (or notice of a Cashless Exercise) has not been delivered by such date, the Share Delivery Date shall be extended one (1) Trading Day after the Aggregate Exercise Price (or notice of a Cashless Exercise) is delivered), the Company shall (X) provided that the Company’s transfer agent (“**Transfer Agent**”) is participating in The Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program and the Warrant Shares are eligible to be issued without a restrictive legend, credit such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal At Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or the Warrant Shares are not eligible to be issued without a restrictive legend, issue and dispatch by overnight courier to the address as specified in the Exercise Notice, a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise. The Company shall be responsible for all fees and expenses of the Transfer Agent and all fees and expenses with respect to the issuance of Warrant Shares via DTC, if any. Upon delivery of the Exercise Notice and the Aggregate Exercise Price (or notice of a Cashless Exercise) (such date of delivery being the “**Exercise Date**”), the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder’s DTC account or the date of delivery of the certificates evidencing such Warrant Shares, as the case may be. If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then the Company shall as soon as practicable and in no event later than three (3) Trading Days after any exercise and at its own expense, issue a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares issuable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional Warrant Shares are to be issued upon the exercise of this Warrant, but rather the number of Warrant Shares to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all taxes which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant; provided, that the Company shall not be required to pay any tax or governmental charge that may be imposed with respect to any applicable withholding or the issuance or delivery of the Warrant Shares to any Person other than the Holder, and no such issuance or delivery shall be made unless and until such Person other than the Holder requesting such issuance has paid to the Company the amount of any such tax, or has established to the satisfaction of the Company that such tax has been paid. The Company’s obligations to issue and deliver Warrant Shares in accordance with the terms and subject to the conditions hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. For purposes of this Warrant, “**Exercise Price**” means \$2.00, subject to adjustment as provided herein.

(c) Company's Failure to Timely Deliver Securities. If (I) the Company shall fail for any reason or for no reason on or prior to the Share Delivery Date either (a) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program and the Warrant Shares are eligible to be issued without a restrictive legend, to issue to the Holder a certificate without any restrictive legend for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company's share register or (b) if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program and the Warrant Shares are eligible to be issued without a restrictive legend, to credit the Holder's balance account with DTC, for such number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of this Warrant and the Warrant Shares are not eligible to be issued without a restrictive legend, to issue and dispatch by overnight courier to the address as specified in the Exercise Notice for delivery on or before the Share Delivery Date a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise, or (II) after the Initial Effective Date (as defined in the Registration Rights Agreement) and during the Registration Period (as defined in the Registration Rights Agreement), (x) the Registration Statement (as defined in the Registration Rights Agreement) covering the resale of all of the Warrant Shares that are the subject of the Exercise Notice (the "**Unavailable Warrant Shares**") is not available for the resale of such Unavailable Warrant Shares, (y) the Company fails to promptly, but in no event later than as required pursuant to the Registration Rights Agreement, so notify the Holder and (z) the Company fails to, on or prior to the Share Delivery Date, deliver the Warrant Shares electronically without any restrictive legend by crediting such aggregate number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (II) is hereinafter referred to as a "**Notice Failure**") and either a Notice Failure or an event described in clause (I) above (referred to herein as an "**Exercise Failure**") occurs, then, in addition to all other remedies available to the Holder, (X) the Company shall pay in cash to the Holder on each day after the Share Delivery Date and during such Notice Failure or Exercise Failure an amount equal to 1.0% of the product of (A) the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which the Holder is entitled, and (B) the higher of (i) the then in effect Exercise Price of this Warrant or (ii) the closing price of the Common Stock on the date of the applicable Exercise Notice, and (Y) the Holder, upon written notice to the Company, may void its Exercise Notice with respect to, and retain or have returned, as the case may be, any portion of this Warrant that has not been exercised pursuant to such Exercise Notice; provided that the voiding of an Exercise Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 1(c) or otherwise. If the Company is required to pay liquidated damages hereunder solely as a result of a Notice Failure, the liquidated damages related thereto will cease to accrue upon delivery of a written notice to the Holder specifying the correct status of the applicable Registration Statement. For the avoidance of doubt, the Company acknowledges that the Company may be liable for Registration Delay Payments pursuant to the Registration Rights Agreement in the event of an Exercise Failure or Notice Failure. In addition to the foregoing, if an Exercise Failure or Notice Failure occurs, and if on or after the Share Delivery Date the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale through a broker by the Holder of shares of Common Stock issuable upon such exercise that the Holder anticipated receiving from the Company (a "**Buy-In**"), then the Company 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 other reasonable out of pocket expenses related to the Buy-In, if any) for the shares of Common Stock so purchased (such number of shares not to exceed the number of Warrant Shares failed to be delivered) (the "**Buy-In Price**"), at which point the Company's obligation to deliver such certificate (and to issue such shares of Common Stock) or credit such Holder's balance account with DTC for such shares of Common Stock shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit such Holder's balance account with DTC, as applicable, 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 sale price of the Common Stock at which the sell order giving rise to such purchase obligation was executed. Nothing shall limit the Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the exercise of this Warrant as required pursuant to the terms hereof.

(d) Cashless Exercise. Notwithstanding anything contained herein to the contrary, if 180 days after the issuance of this Warrant a Registration Statement on Form S-1 (or other applicable registration statement under the 1933 Act) (the "Registration Statement") covering the resale of the Warrant Shares is not available for the issuance of such Warrant Shares, the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Exercise Price, elect instead to exercise this Warrant by means of a cashless exercise (a "Cashless Exercise") in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 1(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 1(a) hereof after the close of "regular trading hours" on such Trading Day;

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

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

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 1(d).

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 12.

f) [Reserved].

(g) Insufficient Authorized Shares. If at any time while this Warrant remains outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of this Warrant at least a number of shares of Common Stock equal to the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all of this Warrant then outstanding (the “**Required Reserve Amount**” and the failure to have such sufficient number of authorized and unreserved shares of Common Stock, an “**Authorized Share Failure**”), then the Company shall promptly take all action necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for this Warrant 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 Company 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 Company shall provide each stockholder with a proxy statement and shall use its commercially reasonable 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. Notwithstanding the foregoing, if any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock without soliciting its stockholders, the Company may satisfy this obligation by obtaining such consent and submitting for filing with Securities and Exchange Commission (the “**SEC**”) an Information Statement on Schedule 14C. In the event that upon any exercise of this Warrant, the Company does not have sufficient authorized shares to deliver in satisfaction of such exercise, then unless the Holder elects to void such attempted exercise, the Holder may require the Company to pay to the Holder within three (3) Trading Days of the applicable exercise, cash in an amount equal to the product of (i) the quotient determined by dividing (x) the number of Warrant Shares that the Company is unable to deliver pursuant to this Section 1(g), by (y) the total number of Warrant Shares issuable upon exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant) and (ii) the Black Scholes Value; provided, that (x) references to “the day immediately following the public announcement of the applicable Fundamental Transaction” in the definition of “Black Scholes Value” shall instead refer to “the date the Holder exercises this Warrant and the Company cannot deliver the required number of Warrant Shares because of an Authorized Share Failure” and (y) clause (iii) of the definition of “Black Scholes Value” shall instead refer to “the underlying price per share used in such calculation shall be the highest Weighted Average Price during the period beginning on the date of the applicable date of exercise and the date that the Company makes the applicable cash payment.”

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and the number of Warrant Shares shall be adjusted from time to time as follows:

(a) Certain Anti-Dilution Adjustments. In addition to the reductions of the Exercise Price described in Section 2(b), if, at any time while this Warrant is outstanding, the Company or any subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire Common Stock at an effective price per share that is lower than the then Exercise Price (such lower price, the "Base Exercise Price" and such issuances, collectively, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive Common Stock at an effective price per share that is lower than the Exercise Price, such issuance shall be deemed to have occurred for less than the Exercise Price on such date of the Dilutive Issuance), then the Exercise Price shall be reduced to equal the Base Exercise Price, subject to adjustment for reverse and forward stock splits and the like. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued;. Notwithstanding the foregoing, no adjustment will be made under this Section 2(a) in respect of an Exempt Issuance. If the Company enters into a Variable Rate Transaction, despite the prohibition set forth in the Purchase Agreement, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Company shall notify the Holder in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 2(a), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 2(a), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Warrant Shares based upon the Base Exercise Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Exercise Price in the Notice of Exercise. In the event the Exercise Price is reduced pursuant to this Section 2(a), the number of Warrant Shares issuable hereunder shall be increased such that the aggregate Exercise Price payable hereunder, after taking into account the decrease in the Exercise Price, shall be equal to the aggregate Exercise Price prior to such adjustment. Notwithstanding anything herein to the contrary, this Section 2(a) shall not apply until receipt of the Shareholder Approval pursuant to Nasdaq Listing Rule 5635(d) and for as long as such rule is applicable to the Company.

(b) Adjustment Upon Subdivision or Combination of Shares of Common Stock. If the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced and the number of Warrant Shares will be proportionately increased. If the Company at any time on or after the Subscription Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased and the number of Warrant Shares will be proportionately decreased. Any adjustment under this Section 2(b) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(c) Voluntary Adjustment By Company. The Company may at any time during the term of this Warrant reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company. Notwithstanding anything herein to the contrary, this Section 2(c) shall not apply until receipt of the Shareholder Approval pursuant to Nasdaq Listing Rule 5635(d) unless the Company is not then subject to Nasdaq Listing Rule 5635(d).

3. RIGHTS UPON DISTRIBUTION OF ASSETS. If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property, options, evidence of indebtedness or any other assets by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “**Distribution**”), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled, and the Company shall reserve the Holder’s pro rata share of the Distribution pending complete exercise of this Warrant, to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all of the record holders of any class of Common Stock (the “**Purchase Rights**”), then the Holder will be entitled, and the Company shall reserve the Holder’s pro rata share of the Purchase Rights pending complete exercise of this Warrant, to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations or restrictions on exercise of this Warrant) 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 shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(b) Fundamental Transactions. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any direct or indirect purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”); then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder’s option, exercisable at any time concurrently with, or within 30 days after, the consummation of the Fundamental Transaction, purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction; provided, however, until the first anniversary of the Issuance Date, the Black Scholes Value of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction shall be capped at the initial Exercise Price of this Warrant; provided, further, if the Fundamental Transaction is not within the Company’s control, including not approved by the Company’s Board of Directors or the consideration is not in all stock of the Successor Entity, Holder shall have the option to require the Company or any Successor Entity to purchase its Warrant for the Black Scholes Value of the unexercised portion of this Warrant as of the date of consummation of such Fundamental Transaction using the same type or form of consideration (and in the same proportion) that is being offered and paid to the holders of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation or Bylaws, or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all of the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the proper exercise of this Warrant by the Holder, and (iii) shall, so long as any of the SPA Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the SPA Warrants, the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of the SPA Warrants then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A STOCKHOLDER. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred, the Holder shall surrender this Warrant to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, that no SPA Warrants for fractional Warrant Shares shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with Section 5.4 of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least five (5) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation; provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant may be amended or waived and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Required Holders, and with respect to any amendment, the amendment is in writing and signed by the Company, except that any Holder may waive the Company's performance hereunder or provide consent as the only such Holder.

10. GOVERNING LAW; JURISDICTION; JURY TRIAL. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. The Company hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to the Company at the address set forth in Section 5.4 of the Securities Purchase Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

11. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and all the Buyers and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

12. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via electronic mail within two (2) Business Days of receipt of the Exercise Notice giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two (2) Business Days submit via electronic mail (a) the disputed determination of the Exercise Price to an independent, reputable investment bank selected by the Company and approved by the Holder or (b) the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

13. REMEDIES, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant 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.

14. TRANSFER. This Warrant and the Warrant Shares may be offered for sale, sold, transferred, pledged or assigned without the consent of the Company.

15. **SEVERABILITY.** If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

16. **DISCLOSURE.** Upon receipt or delivery by the Company of any notice in accordance with the terms of this Warrant, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries, the Company shall within four (4) Business Days 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 Company believes that a notice contains material, nonpublic information relating to the Company or its Subsidiaries, the Company so shall indicate to such Holder contemporaneously with delivery of such notice, and in the absence of any such indication, the Holder shall be allowed to presume that all matters relating to such notice do not constitute material, nonpublic information relating to the Company or its Subsidiaries.

17. **LIMITATIONS OF RIGHTS.** The rights granted to the Holder pursuant to Sections 2(a) and 4(b) of this Warrant are personal to the original Holders of this Warrant and shall automatically be cancelled and of no further effect upon any transfer of this Warrant by sale or otherwise.

18. **CERTAIN DEFINITIONS.** For purposes of this Warrant, the following terms shall have the following meanings:

(a) “**1933 Act**” means the Securities Act of 1933, as amended.

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

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

(d) “**Black Scholes Value**” means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the “OV” function on Bloomberg determined as of the day immediately following the public announcement of the applicable Fundamental Transaction, or, if the Fundamental Transaction is not publicly announced, the date the Fundamental Transaction is consummated, for pricing purposes and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of this Warrant as of such date of request, (ii) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg as of the day immediately following the public announcement of the applicable Fundamental Transaction, or, if the Fundamental Transaction is not publicly announced, the date the Fundamental Transaction is consummated, (iii) the underlying price per share used in such calculation shall be the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in the Fundamental Transaction, (iv) a zero cost of borrow and (v) a 360 day annualization factor.

(e) “**Bloomberg**” means Bloomberg Financial Markets.

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

(g) “**Closing Bid Price**” and “**Closing Sale Price**” means, for any security as of any date, the last closing bid price and last closing trade price, respectively, 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 bid price or the closing trade price, as the case may be, then the last bid price or the last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, 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 closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the OTC Link or “pink sheets” by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price, as the case may be, of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 12. All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

(h) “**Common Stock**” means (i) the Company’s shares of Common Stock, par value \$0.01 per share, and (ii) any share capital into which such Common Stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

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

(j) “**Convertible Securities**” means any stock or securities (other than Options) directly or indirectly convertible into or exercisable or exchangeable for shares of Common Stock.

(k) “**Eligible Market**” means the Principal Market, the NYSE American, The Nasdaq Capital Market, The Nasdaq Global Market, The Nasdaq Global Select Market, or The New York Stock Exchange, Inc.

(l) “**Expiration Date**” means January 8, 2025 or, if such date falls on a day other than a Business Day or on which trading does not take place on the Principal Market (a “**Holiday**”), the next day that is not a Holiday.

(m) “**Group**” means a “group” as that term is used in Section 13(d) of the the Securities Exchange Act of 1934, as amended and as defined in Rule 13d-5 thereunder.

(n) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(o) **“Parent Entity”** of a Person means an entity that, directly or indirectly, controls the applicable Person, including such entity whose common shares or common stock or equivalent equity security is quoted or listed on an Eligible Market (or, if so elected by the Required Holders, any other market, exchange or quotation system), or, if there is more than one such Person or such entity, the Person or such entity designated by the Required Holders or in the absence of such designation, such Person or entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

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

(q) **“Principal Market”** means the Nasdaq Capital Market.

(r) **“Registration Rights Agreement”** means that certain Registration Rights Agreement dated as of the date of the Securities Purchase Agreement by and between the Company and the Buyer.

(s) **“Required Holders”** means the holders of the SPA Warrants representing at least a majority of the shares of Common Stock underlying the SPA Warrants then outstanding.

(t) **“Shareholder Approval”** shall have the meaning set forth in the Securities Purchase Agreement.

(u) **“Successor Entity”** means one or more Person or Persons (or, if so elected by the Holder, the Company or Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or one or more Person or Persons (or, if so elected by the Holder, the Company or the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(v) **“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 Common Stock is then traded; provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is 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).

(w) **“Trading Market”** means the first listed of any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTC Bulletin Board, the OTCQB, or the OTCQX (or any successors to any of the foregoing). As of the closing date of the Financing Transaction, the Nasdaq Capital Market is the Trading Market.

(x) **“Variable Rate Transaction”** means (i) any equity line of credit (which shall include any transaction involving a written agreement between the Company and an investor or underwriter whereby the Company has the right to “put” its securities to the investor or underwriter over an agreed period of time and at an agreed price or price formula) or similar agreement or (ii) any floating or variable priced equity linked instruments (which shall include (A) any debt or equity securities which are convertible into, exercisable or exchangeable for, or carry the right to receive additional shares of Common Stock or Common Stock Equivalents or any of the foregoing at a price that can be reduced either (1) at any conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for Common Stock at any time after the initial issuance of such debt or equity security, or (2) with a fixed conversion, exercise or exchange price that is subject to being reset at some future date at any time after the initial issuance of such debt or equity security due to a change in the market price of the Company’s Common Stock since date of initial issuance, or upon the issuance of any debt, equity or Common Stock Equivalent, and (B) any amortizing convertible security which amortizes prior to its maturity date, where the Company is required or has the option to (or any investor in such transaction has the option to require the Company to) make such amortization payments in shares of Common Stock which are valued at a price that is based upon and/or varies with the trading prices of or quotations for Common Stock at any time after the initial issuance of such debt or equity security (whether or not such payments in stock are subject to certain equity conditions).

(y) “**VWAP**” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on a Trading Market but is then reported on the OTC Pink Marketplace maintained by the OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the volume weighted average price of the Common Stock on the first such facility (or a similar organization or agency succeeding to its functions of reporting prices), or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by Buyer and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

(z) “**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 time (or such other time as the Principal Market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as the Principal Market publicly announces is the official close of trading), 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 time (or such other time as such market publicly announces is the official open of trading), and ending at 4:00:00 p.m., New York time (or such other time as such market publicly announces is the official close of trading), 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 OTC Link or “pink sheets” by OTC Markets Group Inc. (formerly Pink OTC Markets Inc.). If the Weighted Average Price cannot be calculated for a security on a particular 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 Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved pursuant to Section 12 with the term “Weighted Average Price” being substituted for the term “Exercise Price.” All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or other similar transaction during the applicable calculation period.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

XPRESSPA GROUP, INC.

By: _____

Name:

Title: Chief Executive Officer

[Signature Page to Warrant]

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice and hereby directs American Stock Transfer & Trust Company, LLC to issue the above indicated number of shares of Common Stock in accordance with the Exercise Notice.

XPRESSPA GROUP, INC.

By: _____
Name: _____
Title: _____

THIS NOTE AND THE SECURITIES ISSUABLE UPON THE CONVERSION OF ANY PORTION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, NEITHER THIS NOTE NOR ANY SUCH SECURITIES, NOR ANY INTEREST IN ANY THEREOF, MAY BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, ASSIGNED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THIS NOTE OR SUCH SECURITIES UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS.

XPRESSPA HOLDINGS, LLC

SECOND AMENDED AND RESTATED CONVERTIBLE PROMISSORY NOTE

\$7,000,000.00

July 8, 2019
New York, New York

FOR VALUE RECEIVED, XPRESSPA HOLDINGS, LLC, a Delaware limited liability company (the “**Company**”), promises to pay to B3D, LLC, a North Carolina limited liability company (as assignee and successor in interest to ROCKMORE INVESTMENT MASTER FUND LTD.) (the “**Lender**”), or its registered and permitted assigns, in lawful money of the United States of America the principal sum of Seven Million and No/100 Dollars (\$7,000,000.00), or, if less, the then outstanding principal amount of the Loan, together with interest thereon as hereinafter provided. This Note evidences the Loan made to the Company under that certain Credit Agreement dated April 22, 2015, as amended by the First Amendment to Credit Agreement and Waiver dated as of August 8, 2016, and as amended by a Second Amendment to Credit Agreement dated as of May 10, 2017, and as amended by a Third Amendment to Credit Agreement dated as of May 11, 2018, and as amended by a Fourth Amendment to Credit Agreement dated and as of the date hereof (as further amended, restated, amended and restated, extended, renewed, replaced, supplemented or otherwise modified from time to time, collectively, the “**Credit Agreement**”) between the Company and the Lender. The Company shall pay such principal amount on the Maturity Date, whether at maturity, by acceleration or otherwise.

Capitalized terms used but not defined herein shall have the meanings given them in the Credit Agreement.

The Company further promises to pay interest to the Lender on the unpaid principal amount hereof from time to time outstanding from and including April 22, 2015 until paid in full (both before and after judgment and both before and after the occurrence of an Event of Default) at the rates and on the dates determined in accordance with, and calculated in the manner set forth herein and in the Credit Agreement. In no event shall interest exceed the maximum interest rate permitted by applicable law. This Note is secured by the Collateral defined in the Loan Documents

Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the payment shall be made on the next succeeding Business Day (except as otherwise provided in the Credit Agreement) and such extension of time shall be included in the computation of the amount of interest due hereunder.

This Note is the Note referred to in the Credit Agreement and shall be entitled to the benefit of all terms and conditions of, and the security of all security interests, liens and rights granted under or in connection with, the Credit Agreement and the other Loan Documents, and is subject to optional prepayment as provided therein. Upon the occurrence of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note may be declared to be or may automatically become immediately due and payable as provided herein or in the Credit Agreement.

The following is a statement of the rights of Lender and the conditions to which this Note is subject, and to which Lender, by the acceptance of this Note, agrees:

1. **Definitions.** As used in this Note, the following capitalized terms have the following meanings:

(a) **“Black Scholes Value”** means, upon the voluntary prepayment of all or a portion of this Note, the value of the amount subject to prepayment, based on the Black-Scholes Option Pricing Model obtained from the “OV” function on Bloomberg Financial Markets (“Bloomberg”) determined as of the day immediately preceding such voluntary prepayment, for pricing purposes and reflecting (i) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of this Note as of such date of request, (ii) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the HVT function on Bloomberg as of the day immediately preceding the voluntary prepayment, (iii) the VWAP of the Prepaid Conversion Amount, (iv) a zero cost of borrow and (v) a 360 day annualization factor.

(b) **“Business Day”** means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are required or permitted by law to close.

(c) **“Common Stock”** means the common stock of the Parent, par value \$0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

(d) **“Common Stock Equivalents”** means any securities of the Parent or its subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

- (e) “**Company**” includes the limited liability company initially executing this Note and any Person which shall succeed to or assume the obligations of the Company under this Note, with Lender’s prior written approval, at Lender’s sole discretion.
- (f) “**Conversion**” shall have the meaning ascribed to such term in Section 7.
- (g) “**Conversion Date**” shall have the meaning set forth in Section 7(a).
- (h) “**Conversion Price**” shall have the meaning set forth in Section 7(b).
- (i) “**Conversion Shares**” means, collectively, the shares of Common Stock issuable upon conversion of this Note in accordance with the terms hereof.
- (j) “**Dilutive Issuance**” shall have the meaning set forth in Section 8(e).
- (k) “**Credit Agreement**” has the meaning specified in the introductory paragraph hereof.
- (l) “**Event of Default**” has the meaning specified in the Credit Agreement.
- (m) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.
- (n) “**Exempt Issuance**” means the issuance of (a) shares of Common Stock and options to officers, directors, employees or consultants of the Parent after the Note hereof pursuant to plans approved by the shareholders of the Parent and which issuances are approved by a majority of the independent members of a committee of the board of directors, (b) securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Note, provided that such securities and any term thereof have not been amended since the date of this Note to increase the number of such securities or to decrease the issue price, exercise price, exchange price or conversion price of such securities and which securities and the principal terms thereof are described in the reports, schedules, forms, statements and other documents required to be filed by the Parent under the Securities Act and the Exchange Act, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Parent, 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 Parent and shall be intended to provide to the Parent substantial additional benefits in addition to the investment of funds, but shall not include a transaction in which the Parent is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, (d) up to 25,000 shares of Common Stock, (e) securities as payment for investment banking services provided to the Parent, (f) securities issued to third party vendors as payment for goods or services, (g) securities issued to the Parent’s Airport Concession Disadvantaged Business Enterprise partners up to a number of shares of Common Stock equal in value, upon the issuance thereof, to \$150,000, for each Airport Concession Disadvantaged Business Enterprise partner to whom they are issued, (h) securities issued or issuable to the Lender, and their assigns pursuant to the Credit Agreement, or the Notes, or upon exercise, conversion or exchange of any such securities and (i) securities issued or issuable pursuant to that certain letter agreement dated as of July 8, 2019 relating to the Company’s outstanding Class B Warrants and the potential issuance of new “reload” warrants.

- (o) **“Fundamental Transaction”** shall have the meaning set forth in Section 8(e).
- (p) **“Interest Deferral Date”** shall mean the earlier of (i) October 7, 2019 and (ii) the date on which Shareholder Approval is obtained.
- (q) **“Lender”** shall mean the Person specified in the introductory paragraph of this Note or, subject to the terms and conditions of the Credit Agreement, any Person who shall at the time be the registered Lender of this Note.
- (r) **“Notice of Conversion”** shall have the meaning set forth in Section 7(a).
- (s) **“Original Effective Date”** shall mean April 22, 2015.
- (t) **“Parent”** shall mean XpresSpa Group, Inc., a Delaware corporation.
- (u) **“Person”** shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.
- (v) **“Securities Act”** shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.
- (w) **“Shareholder Approval”**. The consent of the Parent’s shareholders pursuant to Nasdaq Listing Rule 5635(d) that is required for the issuance of all the shares of its Common Stock that could be issued pursuant to Section 2 and Section 7.
- (x) **“Trading Day”** means a day on which the principal Trading Market is open for trading.
- (y) **“Trading Market”** means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE MKT, the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market, the New York Stock Exchange, the OTC Bulletin Board, the OTCQB, or the OTCQX (or any successors to any of the foregoing).
- (z) **“Variable Rate Transaction”** means (i) any equity line of credit (which shall include any transaction involving a written agreement between the Parent and an investor or underwriter whereby the Parent has the right to “put” its securities to the investor or underwriter over an agreed period of time and at an agreed price or price formula) or similar agreement or (ii) any floating or variable priced equity linked instruments (which shall include (A) any debt or equity securities which are convertible into, exercisable or exchangeable for, or carry the right to receive additional shares of Common Stock or Common Stock Equivalents or any of the foregoing at a price that can be reduced either (1) at any conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for Common Stock at any time after the initial issuance of such debt or equity security, or (2) with a fixed conversion, exercise or exchange price that is subject to being reset at some future date at any time after the initial issuance of such debt or equity security due to a change in the market price of the Parent’s Common Stock since date of initial issuance, or upon the issuance of any debt, equity or Common Stock Equivalent, and (B) any amortizing convertible security which amortizes prior to its maturity date, where the Parent is required or has the option to (or any investor in such transaction has the option to require the Parent to) make such amortization payments in shares of Common Stock which are valued at a price that is based upon and/or varies with the trading prices of or quotations for Common Stock at any time after the initial issuance of such debt or equity security (whether or not such payments in stock are subject to certain equity conditions).

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

2. **Interest.**

(a) This Note shall bear interest at the rate of 9.00% per annum. Except as provided in Section 2(b) and in Section 2(c) below, interest only on the Loan shall be calculated on a monthly basis, which shall be payable in arrears on the last Business Day of each month (the “**Monthly Interest**”). All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) Notwithstanding Section 2(a) above, from the date hereof until the Interest Deferment Date, the Monthly Interest shall continue to accrue, shall be compounded monthly, and all unpaid amounts thereof shall be due and payable on the Interest Deferment Date.

(c) At Company's option, exercisable in writing by notice to the Company at any time, (i) not more than thirty (30) but not less than five (5) Business Days, prior to the Interest Deferral Date, at Company's sole discretion, all or any portion of the Monthly Interest that is payable on the Interest Deferral Date, or (ii) after the Interest Deferral Date, not more than twenty-one (21) days but not less than five (5) Business Days, prior to the date upon which each payment of Monthly Interest is due, at Company's sole discretion, all or any portion of the Monthly Interest that is payable on such payment date (in each case, the "Share Portion"), shall be paid by way of issuance of duly authorized, validly issued, fully paid and non-assessable and tradeable shares of Common Stock (such number of Common Stock to be issued instead of cash payment, the "Interest Share Amount"). Notwithstanding anything to the contrary contained in this Section 2(b), until the Shareholder Approval is obtained, the Monthly Interest on \$500,000 of the principal of this Note, shall be payable by cash payment alone in accordance with Section 2(a) and may not be included in the Share Portion. The Interest Share Amount will be determined by dividing the amount of the Share Portion set forth in Lender's exercise notice by a price per share of Common Stock equal to ninety percent (90%) of the VWAP on the Trading Date immediately preceding the date of the exercise notice (the "Initial Interest Share Price"). The Parent shall deliver to Lender certificates evidencing the Interest Share Amount within two (2) Business Days after the date of the exercise notice. If ninety percent (90%) of the average VWAP for the 30 Trading Days prior to and including the Interest Deferral Date or, if the Interest Deferral Date is not a Trading Day, on the next succeeding Trading Day (such price, the "Make Whole Price"), is less than the Initial Interest Share Price, then the Lender shall be entitled to additional shares of Common Stock as partial (and additional) payment of the Interest Share Amount (such shares, the "Make Whole Shares"). The quantity of Make Whole Shares will be determined by (y) dividing the amount of the Share Portion set forth in Lender's exercise notice by the Make Whole Price, and (z) subtracting therefrom the Interest Share Amount. The Parent shall deliver to Lender certificates evidencing the Make Whole Shares within two (2) Business Days after the Interest Deferral Date. The Lender shall have the same rights and remedies with respect to the delivery of any such Interest Share Amount and the Make Whole Shares as if such shares were being issued pursuant to a voluntary conversion pursuant to Section 7(a). For the avoidance of doubt, notwithstanding anything to the contrary contained herein, the Company shall not be permitted to pay Monthly Interest in shares of Common Stock until Shareholder Approval has been obtained.

(d) All Monthly Interest arising and accruing from and after the Interest Deferral Date, shall be paid in accordance with Section 2(a) above (except as set forth in Section 2(c) above).

3. **Default Rate.** Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default, then, so long as such Event of Default is continuing, all principal of this Note and each fee and other amount then due and payable by the Company hereunder or under the Credit Agreement (whether at the stated maturity thereof, by acceleration or otherwise) shall bear interest at a rate per annum equal to six percent (6.00%) plus the rate otherwise applicable to this Note.

4. **Voluntary Prepayments.** The Company may, at its option, prepay this Note in full or in part at any time and from time to time by notifying the Lender in writing not later than the date of such prepayment specifying the principal amount of this Note to be prepaid and the date of prepayment. Each such notice shall be irrevocable and the amount specified in each such notice shall be due and payable on the date specified. Each partial prepayment of this Note pursuant to this Subsection shall be in an aggregate principal amount of \$100,000 or an integral multiple of \$50,000 in excess thereof, or, if less than \$100,000, the outstanding principal balance of this Note. In the event the Company prepays this Note in full before the date that is fifteen (15) Business Days prior to the Maturity Date, the Company shall pay a premium equal to the greater of (i) four percent (4%) or (ii) the Black Scholes Value of the outstanding principal amount subject to such prepayment. Notwithstanding anything to the contrary in the foregoing or in any other Loan Document, there shall be no premium or penalty payable by the Company in the event that the Company either (y) prepays this Note in full on or after the date that is fifteen (15) Business Days prior to the Maturity Date and before the Maturity Date or (z) repays this Note in full on the Maturity Date. Simultaneously with each prepayment of this Note, the Company shall prepay all accrued and unpaid interest on the amount prepaid through the date of prepayment. If no Event of Default exists and if the proceeds arising out of any insurance claim or series of related claims do not exceed \$250,000, loss payments in each instance will be applied by the applicable Credit Party to the repair and/or replacement of property with respect to which the loss was incurred to the extent reasonably feasible, and any loss payments or the balance thereof remaining, to the extent not so applied, shall be payable to the applicable Credit Party; provided, however, that payments received by any Credit Party after an Event of Default occurs and is continuing or in excess of \$250,000 for any occurrence or series of related occurrences shall be paid to the Lender for itself and on behalf of the secured parties under the Security Agreement and, if received by such Credit Party, shall be held in trust for the secured parties under the Security Agreement and immediately paid over to the Lender unless otherwise directed in writing by the Lender.

5. **Events of Default.**

Each of the following shall constitute an "Event of Default" hereunder:

- (a) The failure of the Company to make any payment of principal on the Loan on the date when due and payable; or
- (b) The failure of the Company to make any payment of interest, Fees, expenses or other amounts payable under any Loan Document which failure shall have continued unremedied for a period of three Business Days after the date when due and payable; or
- (c) The failure of the Company or the Parent to observe or perform any covenant or agreement contained in Article 7 of the Credit Agreement; or
- (d) The failure of any Credit Party to observe or perform any other term, covenant, or agreement contained in any Loan Document to which it is a party, which failure shall have continued unremedied for a period of 30 days after the occurrence thereof; or
- (e) Any representation, warranty, certification or statement made by any Credit Party (or any of its officers) in any Loan Document to which it is a party, or in any certificate, financial statement or other document delivered or to be delivered by it pursuant thereto, shall prove to have been incorrect or misleading in any material respect when made or deemed made; or
- (f) (i) Any Indebtedness of the Company, the Parent or any Subsidiary Guarantor (other than its obligations hereunder) in an amount in excess of \$100,000, whether as principal, guarantor, surety or other obligor (x) shall become or shall be declared to be due and payable prior to the expressed maturity thereof, or (y) shall not be paid when due or within any grace period for the payment thereof, or (ii) any holder of any obligation referred to in clause (i) of this Subsection (f) shall have the right to declare such obligation due and payable prior to the expressed maturity thereof; or

(g) The Company, the Parent or any Subsidiary Guarantor shall (i) except as permitted by Section 7.03 or 7.07 of the Credit Agreement, suspend or discontinue its business, (ii) make an assignment for the benefit of creditors, (iii) generally not be paying its debts as such debts become due, (iv) admit in writing its inability to pay its debts as they become due, (v) file a voluntary petition in bankruptcy, (vi) become insolvent (however such insolvency shall be evidenced), (vii) file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment of debt, liquidation or dissolution or similar relief under any present or future statute, law or regulation of any jurisdiction, (viii) petition or apply to any tribunal for any receiver, custodian or any trustee for any substantial part of its Property, (ix) be the subject of any such proceeding filed against it which remains undismissed for a period of 60 days, (x) file any answer admitting or not contesting the material allegations of any such petition filed against it or any order, judgment or decree approving such petition in any such proceeding, (xi) seek, approve, consent to, or acquiesce in, any such proceeding, or in the appointment of any trustee, receiver, sequestrator, custodian, liquidator, or fiscal agent for it, or any substantial part of its Property, or an order is entered appointing any such trustee, receiver, custodian, liquidator or fiscal agent and such order remains in effect for 60 days, or (xii) take any formal action for the purpose of effecting any of the foregoing or looking to the liquidation or dissolution of the Company or any Subsidiary Guarantor; or

(h) (i) An order for relief is entered under the United States bankruptcy laws, or (ii) any other decree or order is entered by a court having jurisdiction (A) adjudging the Company, the Parent or any Subsidiary Guarantor bankrupt or insolvent, (B) approving as properly filed a petition seeking reorganization, liquidation, arrangement, adjustment or composition of or in respect of the Company, the Parent or any Subsidiary Guarantor under the United States bankruptcy laws or any other applicable Federal or state law, (C) appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company, the Parent or any Subsidiary Guarantor or of any substantial part of the Property thereof, or (D) ordering the winding up or liquidation of the affairs of the Company, the Parent or any Subsidiary Guarantor, and any such decree or order under this clause (ii) continues unstayed and in effect for a period of 60 days; or

(i) Judgments or other orders for the payment of money aggregating in excess of \$150,000 shall be rendered against the Company or any Subsidiary Guarantor and shall remain unpaid, unstayed on appeal, undischarged, unbonded or undismissed for a period of 30 days; or

(j) Any Loan Document shall cease, for any reason, to be in full force and effect, or the Company or any obligor thereunder shall so assert in writing or shall disavow any of its obligations thereunder or hereunder; or

(k) An ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; or

(l) A Material Adverse Change shall have occurred; or

- (m) A Change in Control shall have occurred; or
- (n) A Change in Management shall have occurred; or
- (o) Parent does not meet the current public information requirements under Rule 144; or

(p) Parent shall fail for any reason to deliver certificates to the Lender evidencing the Interest Share Amount pursuant to Section 2(b), or Parent shall provide at any time notice to the Lender, including by way of public announcement, of Parent's intention to not honor such obligation in accordance with the terms hereof; or

(q) Parent shall fail for any reason to deliver certificates to the Lender prior to the fifth Trading Day after a Conversion Date pursuant to Section 7(c) or Parent shall provide at any time notice to the Lender, including by way of public announcement, of Parent's intention to not honor requests for conversions of any Notes in accordance with the terms hereof; or not

(r) an event resulting in the Common Stock of the Parent no longer being listed or quoted on a Trading Market, or notification from a Trading Market that the Parent is not in compliance with the conditions for such continued quotation and such non-compliance continues for twenty (20) days following such notification; or

(s) a Commission or judicial stop trade order or suspension from the Parent's principal Trading Market; or

(t) the Parent effectuates a reverse split of its Common Stock without ten (10) days prior written notice to the Lender.

6. **Remedies.**

Upon the occurrence of an Event of Default or at any time thereafter during the continuance thereof, (a) if such event is an Event of Default specified in Section 8.01(g) or Section 8.01(h) of the Credit Agreement, (i) the Loan, all accrued and unpaid interest thereon and all other amounts owing under the Loan Documents shall immediately become due and payable, (ii) the Commitment shall immediately terminate and (iii) the Lender may exercise any and all remedies and other rights provided in the Loan Documents, and (b) if such event is any other Event of Default, any or all of the following actions may be taken: (i) the Lender may by notice to the Company, (x) declare the Loan, all accrued and unpaid interest thereon and all other amounts owing under any Loan Documents to be due and payable, whereupon the same shall immediately become due and payable, and (y) declare the Commitment to be immediately terminated, and (ii) the Lender may exercise any and all remedies and other rights provided in the Loan Documents, presentment, demand, protest and all other notices of any kind being in each case hereby expressly waived by the Company.

7. **Conversion.**

(a) **Voluntary Conversion.** At any time after the receipt of Shareholder Approval until this Note is no longer outstanding, all or any portion of the outstanding principal amount of this Note, plus any accrued and unpaid interest on such amount that is outstanding on the Conversion Date shall be convertible, in whole or in part, into shares of Common Stock at the option of the Lender, at any time and from time to time (subject to the conversion limitations set forth in Section 7(d) hereof). The Lender shall effect conversions by delivering to Parent a Notice of Conversion, the form of which is attached hereto as Annex A (each, a “Notice of Conversion”), specifying therein the principal amount of this Note and accrued interest, if any, to be converted and the date on which such conversion shall be effected (each such date, a “Conversion Date”). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion is deemed delivered hereunder. To effect conversions hereunder, the Lender shall not be required to physically surrender this Note to Parent unless the entire principal amount of this Note has been so converted. Conversions hereunder shall have the effect of lowering the outstanding principal amount of this Note in an amount equal to the applicable conversion. The Lender and Parent shall maintain records showing the principal amount(s) converted and the date of such conversion(s). Parent may deliver an objection to any Notice of Conversion within one (1) Business Day of delivery of such Notice of Conversion. In the event of any dispute or discrepancy, the records of the Lender shall be controlling and determinative in the absence of manifest error. **The Lender, and any assignee by acceptance of this Note, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of a portion of the Note, the unpaid and unconverted principal amount of this Note may be less than the amount stated on the face hereof.**

(b) **Conversion Price.** The conversion price for the principal and interest, if any, in connection with voluntary conversions by the Lender pursuant to clause (a) above shall be two dollars (\$2.00) per share of Common Stock, subject to adjustment herein (the “Conversion Price”).

(c) **Mechanics of Conversion.**

(i) **Conversion Shares Issuable Upon Conversion of Principal Amount.** The number of Conversion Shares issuable upon a conversion hereunder shall be determined by the quotient obtained by dividing (x) the amount to be converted plus interest, if any, elected by the Lender to be converted by (y) the Conversion Price.

(ii) **Delivery of Certificate Upon Conversion.** Not later than two (2) Trading Days after each Conversion Date (the “Share Delivery Date”), Parent shall deliver, or cause to be delivered, to the Lender a certificate or certificates representing the Conversion Shares, which, on the Share Delivery Date shall be free of restrictive legends and trading restrictions representing the number of Conversion Shares being acquired upon the conversion of this Note. Parent shall use its best efforts to deliver any certificate or certificates required to be delivered by Parent under this Section 7(c) electronically through the Depository Trust Company or another established clearing corporation performing similar functions.

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

(iv) Obligation Absolute; Partial Liquidated Damages. Parent's obligations to issue and deliver the Conversion Shares upon conversion of this Note in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Lender to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Lender or any other Person of any obligation to Parent or any violation or alleged violation of law by the Lender or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of Parent to the Lender in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by Parent of any such action Parent may have against the Lender. In the event the Lender of this Note shall elect to convert any or all of the outstanding principal amount hereof, Parent may not refuse conversion based on any claim that the Lender or anyone associated or affiliated with the Lender has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Lender, restraining and or enjoining conversion of all or part of this Note shall have been sought and obtained, and Parent posts a surety bond for the benefit of the Lender in the amount of 150% of the outstanding principal amount of this Note, which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to the Lender to the extent it obtains judgment. In the absence of such injunction, Parent shall issue Conversion Shares or, if applicable, cash, upon a properly noticed conversion. If Parent fails for any reason to deliver to the Lender such certificate or certificates pursuant to Section 7(c)(ii) by the Share Delivery Date, Parent shall pay to the Lender, in cash, as liquidated damages and not as a penalty, for each \$1,000 of principal amount being converted, \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth (5th) Trading Day after such liquidated damages being to accrue) for each Trading Day after such Share Delivery Date until such certificates are delivered or Lender rescinds such conversion. Nothing herein shall limit a Lender's right to pursue actual damages or declare an Event of Default pursuant to Section 8 hereof for Parent's failure to deliver Conversion Shares within the period specified herein and the Lender shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit the Lender from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(v) Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. In addition to any other rights available to the Lender, if Parent fails for any reason to deliver to the Lender such certificate or certificates by the Share Delivery Date pursuant to Section 7(c)(ii), and if after such Share Delivery Date the Lender is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Lender or Lender's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Lender of the Conversion Shares which the Lender was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then Parent shall (A) pay in cash to the Lender (in addition to any other remedies available to or elected by the Lender) the amount, if any, by which (x) the Lender's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that the Lender was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of the Lender, either reissue (if surrendered) this Note in a principal amount equal to the principal amount of the attempted conversion (in which case such conversion shall be deemed rescinded) or deliver to the Lender the number of shares of Common Stock that would have been issued if Parent had timely complied with its delivery requirements under Section 7(c)(ii). For example, if the Lender purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of this Note with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, Parent shall be required to pay the Lender \$1,000. The Lender shall provide Parent written notice indicating the amounts payable to the Lender in respect of the Buy-In and, upon request of Parent, evidence of the amount of such loss. Nothing herein shall limit a Lender'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 Parent's failure to timely deliver certificates representing shares of Common Stock upon conversion of this Note as required pursuant to the terms hereof.

(vi) Reservation of Shares Issuable Upon Conversion. Parent covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of this Note as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Lender (and the other holders of the Notes), not less than 125% of the aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 8) upon the conversion of the then outstanding principal amount of this Note and interest which has accrued and would accrue on such principal amount assuming such principal amount was not converted through the Maturity Date. Parent covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

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

(viii) Transfer Taxes and Expenses. The issuance of certificates for shares of the Common Stock on conversion of this Note shall be made without charge to the Lender hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that, Parent 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 Lender of this Note so converted and Parent 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 Parent the amount of such tax or shall have established to the satisfaction of Parent that such tax has been paid. Parent shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion.

8. **Certain Adjustments.**

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

(b) *Subsequent Equity Sales.* If, at any time while this Note is outstanding, the Parent or any Subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or Common Stock Equivalents entitling any Person to acquire Common Stock at an effective price per share that is lower than the Conversion Price (such lower price, the "Base Conversion Price" and such issuances, collectively, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive Common Stock at an effective price per share that is lower than the Conversion Price, such issuance shall be deemed to have occurred for less than the Conversion Price on such date of the Dilutive Issuance), then the Conversion Price shall be reduced to equal the Base Conversion Price, subject to adjustment for reverse and forward stock splits and the like. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued. Notwithstanding the foregoing, no adjustment will be made under this Section 8(b) in respect of an Exempt Issuance. If the Parent enters into a Variable Rate Transaction, the Parent shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. Notwithstanding anything herein to the contrary, this Section 8(b) shall not apply until receipt of the Shareholder Approval pursuant to Nasdaq Listing Rule 5635(d) unless the Parent is not then subject to Nasdaq Listing Rule 5635(d). The Company and the Parent shall notify the Lender in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 8(b), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Parent provides a Dilutive Issuance Notice pursuant to this Section 8(b), upon the occurrence of any Dilutive Issuance, the Lender is entitled to receive a number of Conversion Shares based upon the Base Conversion Price on or after the date of such Dilutive Issuance, regardless of whether the Lender accurately refers to the Base Conversion Price in the Notice of Conversion.

(c) *Subsequent Rights Offerings.* In addition to any adjustments pursuant to Sections 8(a) and (b) above, if at any time Parent grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Lender will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Lender could have acquired if the Lender had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without regard to any limitations on exercise hereof, if any) 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 shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

(d) *Pro Rata Distributions.* During such time as this Note is outstanding, if Parent shall declare or make any dividend whether or not permitted, or makes any other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Note, then, in each such case, the Lender shall be entitled to participate in such Distribution to the same extent that the Lender would have participated therein if the Lender had held the number of shares of Common Stock acquirable upon complete exercise of this Note (without regard to any limitations on exercise hereof, if any) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution.

(e) *Fundamental Transaction.* If, at any time while this Note is outstanding, (i) Parent, directly or indirectly, in one or more related transactions effects any merger or consolidation of Parent with or into another Person, (ii) Parent, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by Parent or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) Parent, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, (v) Parent, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then, upon any subsequent conversion of this Note, the Lender shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 7(d) on the conversion of this Note), the number of shares of Common Stock of the successor or acquiring corporation or of Parent, if it is the surviving corporation, and any additional consideration (the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Note is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 7(d) on the conversion of this Note). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one (1) share of Common Stock in such Fundamental Transaction, and Parent shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Lender shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Note following such Fundamental Transaction. Parent shall cause any successor entity in a Fundamental Transaction in which Parent is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of Parent under this Note, the Credit Agreement, the Security Agreement, the Parent Guaranty, and the other Loan Documents (as defined in the Credit Agreement) in accordance with the provisions of this Section 8(e) pursuant to written agreements in form and substance reasonably satisfactory to the Lender and approved by the Lender (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Note, deliver to the Lender in exchange for this Note a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Note which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Note (without regard to any limitations on the conversion of this Note) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Note immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Lender. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Note and the other Transaction Documents referring to the “Parent” shall refer instead to the Successor Entity), and may exercise every right and power of Parent and shall assume all of the obligations of Parent under this Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as Parent herein.

(f) *Calculations.* All calculations under this Section 8 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 8, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of Parent) issued and outstanding.

(g) *Notice to the Lender.*

(i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 8, Parent shall promptly deliver to each Lender a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

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

(h) *Nasdaq Approval.* Until the Parent receives the approval of its shareholders for the issuance of the Conversion Shares pursuant to Nasdaq Listing Rule 5635(d) and for so long as such requirement is applicable to the Parent, the Parent may not issue any Interest Share Amount in violation of such Listing Rule nor additional Conversion Shares resulting from a Dilutive Issuance in excess of the amount of Conversion Shares issuable prior to the reduction of the Conversion Price due to the Dilutive Issuance adjustment.

9. [Reserved]

10. **Lender Voting Rights; Rights to Receive Distributions.** Except as otherwise specifically provided herein, prior to the issuance to the Lender of the Conversion Shares to which the Lender is then entitled to receive upon the due exercise of the Conversion Right, the Lender shall not be entitled to vote or receive distributions or dividends or be deemed the holder of Common Stock of the Parent for such purposes, nor shall anything contained herein be construed to confer upon the Lender, as such, any right to vote, give or withhold consent to any action, receive notice of meetings or other actions by stockholders of Parent, receive distributions, dividends or subscription rights, or otherwise. In addition, nothing contained herein shall be construed as imposing any liabilities on the Lender to purchase any securities (upon exercise of the Conversion Right or otherwise) or as a stockholder of the Parent, whether such liabilities are asserted by the Company or by creditors of the Parent or the Company. Notwithstanding this Section 10, the Parent shall provide the Lender with copies of the same notices and other information given to the stockholders of the Parent generally, contemporaneously with the giving thereof to its stockholders.

11. **Successors and Assigns.** Subject to the restrictions on transfer described in Sections 13 and 14 hereof, the rights and obligations of the Company and Lender shall be binding upon and benefit the successors, permitted assigns and transferees of the parties.

12. **Waiver and Amendment.** Any provision of this Note may be amended, waived or modified only upon the written consent of the Company and the Lender.

13. **Transfer of this Note by Lender.** Subject to the transfer conditions referred to in the legend endorsed hereon, this Note may be transferred by Lender only in accordance with Section 9.03 of the Credit Agreement.

14. **Assignment by the Company.** Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Company without the prior written consent of Lender.

15. **Notices.** All notices, requests, demands, consents, instructions or other communications pursuant to this Note shall be in writing, either by letter (delivered by nationally recognized overnight courier service or sent by registered or certified mail, return receipt requested), facsimile transmission or other electronic means to each party at the respective addresses, facsimile numbers and email addresses of the parties as set forth in the Credit Agreement. Any notice, request, demand or other communication hereunder shall be deemed to have been given on: (x) the day on which it is sent by facsimile transmission or other electronic means to such party at its facsimile number or email address specified above (provided such notice shall be effective only if followed by one of the other methods of delivery set forth herein) or delivered by a nationally recognized overnight courier service to such party at its address specified above, or (y) on the third Business Day after the day deposited in the mail, postage prepaid, if sent by mail. Any party hereto may change the Person, address or facsimile number to whom or which notices are to be given hereunder, by notice duly given hereunder; provided that any such notice shall be deemed to have been given hereunder only when actually received by the party to which it is addressed.

16. **Payment.** Payment shall be made in lawful tender of the United States.

17. **Expenses.** If action is instituted to collect this Note after the occurrence of any Event of Default, the Company promises to pay all costs and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred in connection with such action, in each case to the extent required by Section 9.06 of the Credit Agreement.

18. **Governing Law.** This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions of the State of New York, or of any other state.

19. **Amendment and Restatement of Existing Note.** This Note amends and restates that certain Amended And Restated Promissory Note issued to the Lender by the Company on August 8, 2018 in the original principal amount of \$6,500,000 (the "**Existing Note**") in its entirety. Upon the issuance of this Note, the Existing Note shall be deemed superseded by this Note without any further action by the Lender or the Company. The indebtedness evidenced by the Existing Note is continuing indebtedness, and nothing in this Note shall be deemed to constitute a payment, settlement or novation of the Existing Note, or the release of, or otherwise adversely affect any lien or security interest securing such indebtedness or any rights of Lender against the undersigned, or any guarantor of this Note or the Existing Note. Upon receipt of this Note Lender, at the Company's request shall surrender the Existing Note to the Company. All of the obligations of the Company and all Guarantors and the Parent shall, from and after execution and delivery of this Note by the Company, continue in full force and effect as set forth herein.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Note to be issued as of the date first written above.

XPRESSPA HOLDINGS, LLC

By: _____
Name: Douglas Satzman
Its: President

[Signature Page to 2nd Amended & Restated Convertible Promissory Note]

[FORM OF NOTICE OF CONVERSION]

The undersigned hereby elects to convert principal under the Second Amended And Restated Convertible Promissory Note dated July 8, 2019, of XPRESSPA HOLDINGS, LLC, a Delaware limited liability company (the "**Company**"), promises to pay to B3D, LLC, a North Carolina limited liability company, into shares of common stock (the "**Common Stock**"), of the Company's Parent XpresSpa Group, Inc., a Delaware corporation (the "**Parent**"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as reasonably requested by Parent in accordance therewith. No fee will be charged to the holder for any conversion, except for such transfer taxes, if any.

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

Date to Effect Conversion: _____

Principal Amount of Note to be Converted: \$ _____

Accrued Interest to be Converted, if any: \$ _____

Conversion Price: \$ _____

Number of shares of Common Stock to be issued: _____

Signature: _____

Name: _____

Address for Delivery of Common Stock Certificates: _____

Or

DWAC Instructions: _____

Broker No: _____

Account No: _____

XPRESSPA GROUP, INC.
AMENDMENT TO
WARRANT TO PURCHASE COMMON STOCK

This Amendment to Warrant to Purchase Common Stock (this "Amendment"), dated as of July 8, 2019, is being entered into by and between XpresSpa Group, Inc. a Delaware corporation (the "Company") and the Holders identified on the signature pages hereto (the "Holders").

WHEREAS, the Holders are the record and beneficial owners of certain warrants (the "December 2016 Warrants") to purchase shares of the Company's common stock, par value \$0.01 per share (the "Common Stock"), issued pursuant to that certain Agreement and Plan of Merger, dated as of August 8, 2016, as subsequently amended (the "Merger Agreement") by and among the Company (formerly known as FORM Holdings Corp.), FHXMS, LLC, XpresSpa Holdings, LLC, the unitholders of XpresSpa Holdings, LLC who were parties thereto (the "Unitholders") and Mistral XH Representative, LLC, as representative of the Unitholders.

WHEREAS, pursuant to Section 11 of the December 2016 Warrants, any term of the December 2016 Warrants may be amended or waived upon written consent of the Company and the Registered Holder of such December 2016 Warrant; and

WHEREAS, subject to receipt of shareholder approval pursuant to Nasdaq Listing Rule 5635(a) ("Shareholder Approval"), the Company and the Holders have agreed to amend the December 2016 Warrants to reflect (i) an adjustment to the exercise price and (ii) the inclusion of additional provisions regarding anti-dilution price protection and voluntary adjustment to the exercise price by the Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein below and other good and valuable consideration, the receipt and legal sufficiency of which are hereby mutually acknowledged, the Holders and the Company hereby agree as follows:

1. Capitalized Terms. Unless otherwise specified in this Amendment, all terms herein shall have the same meanings ascribed to them in the December 2016 Warrants.

2. Amendment to Introductory Language. Subject to receipt of Shareholder Approval, the introductory paragraph is hereby amended by adding the following proviso at the end of the first sentence:

; provided, however, that upon receipt of shareholder approval pursuant to Nasdaq Listing Rule 5635(a) ("Shareholder Approval"), the Exercise Price shall be adjusted to be equal to \$2.00.

3. Amendment to Section 2. Subject to receipt of Shareholder Approval, Section 2 of the December 2016 Warrant is hereby amended to include Section 2(e) as follows:

(e) **Certain Anti-Dilution Adjustments.** In addition to the reductions of the Exercise Price described in Section 2(a), if, at any time while this Warrant is outstanding, the Company or any subsidiary, as applicable, sells or grants any option to purchase or sells or grants any right to reprice, or otherwise disposes of or issues (or announces any sale, grant or any option to purchase or other disposition), any Common Stock or any securities of the Company or its subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock ("Common Stock Equivalents") entitling any person to acquire Common Stock at an effective price per share that is lower than the then Exercise Price (such lower price, the "Base Exercise Price" and such issuances, collectively, a "Dilutive Issuance") (if the holder of the Common Stock or Common Stock Equivalents so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, or due to warrants, options or rights per share which are issued in connection with such issuance, be entitled to receive Common Stock at an effective price per share that is lower than the Exercise Price, such issuance shall be deemed to have occurred for less than the Exercise Price on such date of the Dilutive Issuance), then the Exercise Price shall be reduced to equal the Base Exercise Price, subject to adjustment for reverse and forward stock splits and the like. Such adjustment shall be made whenever such Common Stock or Common Stock Equivalents are issued; notwithstanding the foregoing, no adjustment will be made under this Section 2(e) in respect of an Exempt Issuance. If the Company enters into a Variable Rate Transaction, the Company shall be deemed to have issued Common Stock or Common Stock Equivalents at the lowest possible conversion price at which such securities may be converted or exercised. The Company shall notify the Registered Holder in writing, no later than the Trading Day following the issuance of any Common Stock or Common Stock Equivalents subject to this Section 2(e), indicating therein the applicable issuance price, or applicable reset price, exchange price, conversion price and other pricing terms (such notice, the "Dilutive Issuance Notice"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 2(e), upon the occurrence of any Dilutive Issuance, the Holder is entitled to receive a number of Warrant Shares based upon the Base Exercise Price on or after the date of such Dilutive Issuance, regardless of whether the Holder accurately refers to the Base Exercise Price in the Notice of Exercise. In the event the Exercise Price is reduced pursuant to this Section 2(e), the number of Warrant Shares issuable hereunder shall be increased such that the aggregate Exercise Price payable hereunder, after taking into account the decrease in the Exercise Price, shall be equal to the aggregate Exercise Price prior to such adjustment. Notwithstanding anything herein to the contrary, this Section 2(e) shall not apply until the receipt of Shareholder Approval unless the Company is not then subject to Nasdaq Listing Rule 5635(a) or Rule 5635(d).

For purposes of this Section 2(e), the following definitions shall apply:

"Equity Line of Credit" shall include any transaction involving a written agreement between the Company and an investor or underwriter whereby the Company has the right to "put" its securities to the investor or underwriter over an agreed period of time and at an agreed price or price formula.

“Exempt Issuance” means the issuance of (a) shares of Common Stock and options to officers, directors, employees or consultants of the Company after the July 8, 2019 pursuant to plans approved by the shareholders of the Company and which issuances are approved by a majority of the independent members of a committee of the board of directors, (b) securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on July 8, 2019, provided that except as modified in the amendments to each of (i) the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock and (ii) the Certificate of Designation of Preferences, Rights and Limitations of the Series E Convertible Preferred Stock, such securities and any term thereof have not been amended since July 8, 2019 to increase the number of such securities or to decrease the issue price, exercise price, exchange price or conversion price of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such issuance shall only be to a person (or to the 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 Company and shall be intended to provide to the Company substantial additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, (d) up to 25,000 shares of Common Stock, (e) securities as payment for investment banking services provided to the Company, (f) securities issued to third party vendors as payment for goods or services, (g) securities issued to the Company’s Airport Concession Disadvantaged Business Enterprise partners, (h) securities issued as payment of interest pursuant to the Credit Agreement dated as of April 22, 2015, as subsequently amended through the date hereof (including, without limitation, that certain Fourth Amendment to Credit Agreement, dated as of July 8, 2019, by and between the Company and B3D, LLC), by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd., and (j) securities issued or issuable pursuant to that certain letter agreement dated as of July 8, 2019 relating to the Company’s outstanding Class B Warrants and the potential issuance of new warrants.”

“Variable Priced Equity Linked Instruments” shall include: any debt or equity securities which are convertible into, exercisable or exchangeable for, or carry the right to receive additional shares of Common Stock or Common Stock Equivalents or any of the foregoing at a price that can be reduced either at any conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for Common Stock at any time after the initial issuance of such debt or equity security, or with a fixed conversion, exercise or exchange price that is subject to being reset at some future date at any time after the initial issuance of such debt or equity security due to a change in the market price of the Company’s Common Stock since date of initial issuance, or upon the issuance of any debt, equity or Common Stock Equivalent, and any amortizing convertible security which amortizes prior to its maturity date, where the Company is required or has the option to (or any investor in such transaction has the option to require the Company to) make such amortization payments in shares of Common Stock which are valued at a price that is based upon and/or varies with the trading prices of or quotations for Common Stock at any time after the initial issuance of such debt or equity security (whether or not such payments in stock are subject to certain equity conditions).

“Variable Rate Transaction” means any Equity Line of Credit or similar agreement, issuance or agreement to issue floating or Variable Priced Equity Linked Instruments (subject to adjustment for stock splits, distributions, dividends, recapitalizations and the like).

4. Amendment to Section 2. Subject to receipt of Shareholder Approval, Section 2 of the December 2016 Warrant is hereby amended to include Section 2(f) as follows:

(f) **Voluntary Adjustment by Company.** The Company may at any time during the term of this Warrant reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the Board of Directors of the Company. Notwithstanding anything herein to the contrary, this Section 2(e) shall not apply until receipt of Shareholder Approval unless the Company is not then subject to Nasdaq Listing Rule 5635(a) or Rule 5635(d).

5. No Other Amendment. Except for the matters set forth in this Amendment, all other terms of the December 2016 Warrants shall remain unchanged and in full force and effect.

6. Governing Law. This Amendment shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Amendment shall be governed by, the laws of the State of New York, except for its conflicts of law provisions.

7. Counterparts. This Amendment may be executed in the original or by facsimile in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute but one and the same instrument.

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XPRESSPA GROUP, INC.

By:

Name: Douglas Satzman

Title: Chief Executive Officer

Mistral Spa Holdings, LLC

By: _____
Name:
Title:

B3D, LLC

By: _____
Name: Brian Daly
Title: Manager

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement") is dated as of July 8, 2019, between XpresSpa Group, Inc., a Delaware corporation and includes any successor Company thereto (the "Company"), and Calm.com, Inc., a Delaware company (the "Purchaser").

WHEREAS, the Company and Purchaser desire to enter into this Agreement, pursuant to which the Purchaser is to be granted the right to acquire securities of the Company as set forth herein; and

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 promulgated thereunder, the Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company, securities of the Company as more fully described in this Agreement (the "Offering").

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

ARTICLE I.
DEFINITIONS

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

"A&R Collaboration Agreement" means that certain Amended and Restated Product Sale and Marketing Agreement, dated as of July 8, 2019 by and between the Company and the Purchaser, in the form attached hereto as Exhibit H.

"Accredited Investor" shall have the meaning ascribed to such term in Section 3.2(c).

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

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

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

"Amendment to Credit Agreement" means that certain Fourth Amendment to Credit Agreement, dated as of July 8, 2019, by and between the Company and B3D, LLC, in the form attached hereto as Exhibit F.

“Applicable Law” shall mean any law, rule or regulation of any governmental authority or jurisdiction applicable to any party to this Agreement, as the case may be.

“Authorized Share Failure” shall have the meaning ascribed to such term in Section 4.11(a).

“Board of Directors” means the board of directors of the Company.

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

“Buy-In” shall have the meaning ascribed to such term in Section 4.1(h).

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

“Closing Date” means the Business Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchaser’s obligation to pay the Subscription Amount at such Closing, and (ii) the Company’s obligations to deliver the Securities to be issued and sold at such Closing, in each case, have been satisfied or waived, but in no event later than the tenth Business Day following the date hereof.

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock of the Company, par value \$0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

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

“Company Counsel” means, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Chrysler Center, 666 3rd Avenue, New York, NY 10017, Attn: Kenneth R. Koch, Esq., email: krkoch@mintz.com.

“Conversion Price” shall have the meaning ascribed to such term in the Notes.

“Davis Polk & Wardwell” shall mean Davis Polk & Wardwell, with offices located at 1600 El Camino Real, California 94025, email: alan.denenberg@davispolk.com; donald.lang@davispolk.com.

“DGCL” means the Delaware General Corporation Law.

“Disclosure Schedules” means the Disclosure Schedules of the Company delivered concurrently herewith.

“Disqualification Event” shall have the meaning ascribed to such term in Section 3.1(oo).

“Effective Date” means the earliest of the date that (a) a Registration Statement has been declared effective by the Commission with respect to all of the Underlying Common Shares (as defined herein) without regard to any cutbacks permitted therein and has been continuously effective for not less than sixty (60) calendar days, (b) (i) all of the Underlying Common Shares have been sold pursuant to Rule 144, or (ii) may be sold by the holders thereof pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions, or (c) Company counsel has delivered to the Transfer Agent and Purchaser a written unqualified opinion that resales may then be made by such holders of the Underlying Common Shares pursuant to an effective Registration Statement or the exemption described in (b)(ii) above, which opinion shall be in form and substance reasonably acceptable to the Purchaser.

“Equity Line of Credit” shall have the meaning ascribed to such term in Section 4.13.

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

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

“Exempt Issuance” means the issuance of (a) shares of Common Stock and options to officers, directors, employees or consultants of the Company after the Closing Date pursuant to plans approved by the shareholders of the Company and which issuances are approved by a majority of the independent members of a committee of the board of directors, (b) securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that except as modified in the Series D CoD Amendment and the Series E CoD Amendment, such securities and any term thereof have not been amended since the date of this Agreement to increase the number of such securities or to decrease the issue price, exercise price, exchange price or conversion price of such securities and which securities and the principal terms thereof are set forth on Schedule 3.1(g), and described in the SEC Reports, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such issuance shall only be to a Person (or to the 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 Company and shall be intended to provide to the Company substantial additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities, (d) up to 25,000 shares of Common Stock, (e) securities as payment for investment banking services provided to the Company, (f) securities issued to third party vendors as payment for goods or services, (g) securities issued to the Company’s Airport Concession Disadvantaged Business Enterprise partners, (h) securities issued or issuable to the Purchaser and its assigns pursuant to this Agreement, the Notes or the Warrants and other Transaction Documents or upon exercise, conversion or exchange of any such securities, (i) securities issued as payment of interest pursuant to the Rockmore Indebtedness as amended by the Amendment to the Credit Agreement, and (j) securities issued or issuable pursuant to the Warrant Reload Offer Letter.

“Exercise Price” shall have the meaning ascribed to such term in the Warrants.

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

“Form 8-K” shall have the meaning ascribed to such term in Section 4.6.

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

“Indebtedness” shall have the meaning ascribed to such term in Section 3.1(z).

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

“Investor Questionnaire” means the form of Accredited Investor Questionnaire attached hereto as Exhibit D.

“Issuer Covered Person” shall have the meaning ascribed to such term in Section 3.1(oo).

“Legend Removal Date” shall have the meaning ascribed to such term in Section 4.1(d).

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

“Listing Default” shall have the meaning ascribed to such term in Section 4.11(b).

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

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

“Maximum Rate” shall have the meaning ascribed to such term in Section **Error! Reference source not found.**

“Money Laundering Laws” shall have the meaning ascribed to such term in Section 3.1(gg).

“Notes” means the unsecured convertible notes issuable pursuant to this Agreement, in the form of Exhibit A hereto.

“OFAC” shall have the meaning ascribed to such term in Section 3.1(hh).

“Permitted Indebtedness” means (a) any unsecured liabilities for borrowed money or amounts owed ranking pari passu or junior to the Note not in excess of \$1,000,000 in the aggregate (other than trade accounts payable incurred in the ordinary course of business), (b) 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 the Company’s consolidated balance sheet (or the notes thereto) not affecting more than \$1,000,000 in the aggregate, except guaranties, endorsements and other contingent obligations in respect of letters of credit, bank guarantees or similar instruments in the ordinary course of business relating to leases which shall not be subject to the \$1,000,000 threshold set forth in this clause (b) above; (c) the present value of any lease payments due under leases entered into in the ordinary course of business required to be capitalized in accordance with GAAP; (d) purchase money indebtedness incurred after the date of this Agreement in connection with the acquisition of capital assets up to the purchase price of such assets; (e) any liabilities for borrowed money which in the aggregate with all Indebtedness under this clause (e) and clause (f) does not exceed \$11,000,000 in aggregate principal amount, and which, for the avoidance of doubt, shall include the Senior Indebtedness; *provided*, that any Indebtedness incurred under this clause (e) after the date hereof shall be unsecured and shall rank *pari passu* or junior to the Note; (f) any liabilities for borrowed money secured by the credit card receipts of the location or locations to which American Express or any other nationally recognized credit company extends credit, which shall not in the aggregate with all Indebtedness under clause (e) and this clause (f) exceed \$11,000,000 in aggregate principal amount; (g) Indebtedness incurred in connection with the construction and development of new XpresSpa locations, provided that (i) such Indebtedness is secured only by the assets of the Subsidiary which owns and/or operates such location and only in the assets of such location, and (ii) the Indebtedness is not guaranteed by the Company or any other Subsidiary of the Company; and (h) Indebtedness incurred in connection with this Purchase Agreement and the Note.

“Permitted Lien” means the individual and collective reference to the following: (a) Liens for taxes, assessments and other governmental charges or levies not yet due or Liens for taxes, assessments and other governmental charges or levies being contested in good faith and by appropriate proceedings for which adequate reserves (in the good faith judgment of the management of the Company) have been established in accordance with GAAP, (b) Liens imposed by law which were incurred in the ordinary course of the Company’s business, such as carriers’, warehousemen’s and mechanics’ Liens, statutory landlords’ Liens, and other similar Liens arising in the ordinary course of the Company’s business, and which (x) do not individually or in the aggregate materially detract from the value of such property or assets or materially impair the use thereof in the operation of the business of the Company and its consolidated Subsidiaries or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing for the foreseeable future the forfeiture or sale of the property or asset subject to such Liens, and (c) Liens existing on the date hereof incurred in connection with Permitted Indebtedness under clause (b) and clause (e) thereunder, (d) Liens incurred in connection with Permitted Indebtedness under clause (c) thereunder provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets so acquired or leased, (e) Liens incurred in connection with Permitted Indebtedness under clause (f) of the definition of “Permitted Indebtedness,” provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the credit card receipts of the location or locations to which a credit card company extends credit, (f) Liens incurred in connection with the construction, development and/or remodeling of existing XpresSpa locations, provided that such Liens only relate to the assets of the Subsidiary which owns and/or operates such location and only in the assets of such location with respect to such construction, development and/or remodeling, (g) Liens to the extent arising solely from the filing of protective Uniform Commercial Code financing statements in respect of equipment leased to the Company or any Subsidiary in the ordinary course of its business under true, as opposed to finance, leases, only up to the value of such leased equipment, (h) Liens securing the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds, and other obligations of like nature, in each case in the ordinary course of business, (i) any interest or title of a lessor of real property secured by a lessor’s interest in such real property under any lease, (j) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business, and (k) Liens incurred in connection with Permitted Indebtedness under clause (g) of the definition of “Permitted Indebtedness,” provided that such Liens are not secured by assets of the Company or its Subsidiaries other than the assets of the Subsidiary which owns such location and only in the assets of such location.

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

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

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

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

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

“Registration Rights Agreement” means the Registration Rights Agreement, dated the date hereof, among the Company and the Purchaser, in the form of Exhibit G attached hereto.

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

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

“Required Minimum” means, as of any date, 100% of the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Common Shares issuable upon exercise in full of all Warrants or conversion in full of all Notes and further conversion into underlying Common Shares, ignoring any conversion or exercise limits set forth therein, and assuming that any previously unconverted Notes will be held until the maturity date of such Notes, but in each case without giving any effect to any potential triggering of anti-dilution provisions.

“Rockmore Indebtedness” means all Indebtedness outstanding pursuant to that certain Credit Agreement dated as of April 22, 2015, as subsequently amended, by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd.

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

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

“Senior Indebtedness” shall mean all amounts due in connection with the Rockmore Indebtedness.

“Securities” means the Notes, the Warrants, the Underlying Preferred Shares and the Underlying Common Shares.

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

“Series D CoD Amendment” shall mean the amendment, dated July 8, 2019, to the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock in the form of Exhibit I attached hereto.

“Series D Preferred Stock” shall mean the Company’s Series D Convertible Preferred Stock.

“Series E Certificate of Designation” shall mean the Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock, dated November 12, 2018.

“Series E CoD Amendment” shall mean the amendment, dated July 8, 2019, to the Series E Certificate of Designation in the form of Exhibit J attached hereto.

“Series E Preferred Stock” shall mean the Company’s Series E Convertible Preferred Stock.

“Shareholder Approval” shall have the meaning ascribed to such term in Section 4.27.

“Short Sales” means “short sales” as defined in Rule 200 of Regulation SHO under the Exchange Act and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, swaps and similar arrangements (including on a total return basis) whether such transactions are made through U.S. or non-U.S. broker dealers or foreign regulated brokers.

“Stock Option Plans” means the Stock Option Plans of the Company in effect as the date of this Agreement, the principal terms of which have been disclosed in the SEC Reports.

“Subscription Amount” means the aggregate amount to be paid by the Purchaser for the Notes and Warrants purchased hereunder at the Closing as specified below the Purchaser’s name on the signature page of this Agreement and next to the heading “Subscription Amount,” in United States dollars and in immediately available funds.

“Subsidiary” means with respect to any entity at any date, any direct or indirect Person, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity of which (A) more than 50% of (i) the outstanding capital stock having (in the absence of contingencies) ordinary voting power to elect a majority of the board of directors or other managing body of such entity, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such entity, or (B) is under the actual control of the Company.

“Termination Date” shall have the meaning ascribed to such term in Section 2.1.

“Trading Day” means a day on which the principal Trading Market is open for trading for at least 4.5 hours; provided, that in the event that the Common Stock is not listed or quoted for trading on a Trading Market on the date in question, then Trading Day shall mean a Business Day.

“Trading Market” means the first listed of any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the OTC Bulletin Board, the OTCQB, or the OTCQX (or any successors to any of the foregoing). As of the Closing Date, the NASDAQ Capital Market is the Trading Market.

“Transaction Documents” means this Agreement, the Note, the Warrants, the A&R Collaboration Agreement, the Registration Rights Agreement, the Disclosure Schedules, all exhibits and schedules thereto and hereto and any other documents or agreements executed by any party hereto in connection with the transactions contemplated hereunder.

“Transfer Agent” means American Stock Transfer & Trust Company, LLC, located at 6201 15th Avenue, Brooklyn, NY 11219 and any successor transfer agent of the Company.

“Underlying Common Shares” means the shares of Common Stock issued and issuable (a) upon conversion of the Underlying Preferred Shares and (b) upon exercise of the Warrants.

“Underlying Preferred Shares” means (a) the shares of Series E Preferred Stock issued and issuable (i) upon conversion of the Notes and (ii) in lieu of the cash payment of interest on the Notes in accordance with the terms of the Notes and (b) any other shares of Series E Preferred Stock issued or issuable to the Purchaser in connection with or pursuant to the Securities or Transaction Documents.

“Unlegended Shares” shall have the meaning ascribed to such term in Section 4.1(d).

“Variable Priced Equity Linked Instruments” shall have the meaning ascribed to such term in Section **Error! Reference source not found.**

“Variable Rate Transaction” shall have the meaning ascribed to such term in Section **Error! Reference source not found.**

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted for trading on a Trading Market but is then reported on the OTC Pink Marketplace maintained by the OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the volume weighted average price of the Common Stock on the first such facility (or a similar organization or agency succeeding to its functions of reporting prices), or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by Purchaser and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

“Warrants” means the Common Stock purchase warrants delivered to the Purchaser at the Closing in accordance with Section 2.2(a) hereof in the form of Exhibit B attached hereto.

“Warrant Reload Offer Letter” means that certain letter agreement dated as of July 8, 2019 relating to the Company’s outstanding Class B Warrants and the potential issuance of new warrants.

“Warrant Shares” means the shares of Common Stock issuable upon exercise of the Warrants, provided that any share of Common Stock issued upon exercise of the Warrants shall not constitute an issued Warrant Share for purposes of this Agreement after such share has been irrevocably sold pursuant to an effective registration statement under the Securities Act or pursuant to Rule 144 without further restrictions or conditions to transfer pursuant to Rule 144.

ARTICLE II. PURCHASE AND SALE

2.1 Closing. On the Closing Date, upon the terms and subject to the conditions set forth herein, substantially concurrent with the execution and delivery of this Agreement by the parties hereto, the Company agrees to sell, and the Purchaser agrees to purchase, an aggregate of \$2,500,000 principal amount of Notes together with Warrants as determined pursuant to Section 2.2(a) (such purchase and sale being the “Closing”). The Purchaser shall deliver to the Company the Purchaser’s Subscription Amount, and the Company shall deliver to the Purchaser its Note and Warrants, as determined pursuant to Section 2.2(a), and the Company and the Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Closing shall occur at the offices of Davis Polk & Wardwell or such other location as the parties shall mutually agree. Notwithstanding anything herein to the contrary, the Closing Date shall occur on or before July 15, 2019 (the “Termination Date”). With respect to any Closing not held on or before the Termination Date, the Escrow Agent shall cause (i) all subscription documents executed by the Company or a Purchaser to be returned to the Company or the Purchaser, as applicable, and (ii) each Subscription Amount to be returned, without interest or deduction to the Purchaser who delivered such Subscription Amount.

2.2 Deliveries.

- (a) On or prior to the Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:
 - (i) this Agreement duly executed by the Company;
 - (ii) a legal opinion of Company Counsel, substantially in the form of Exhibit C attached hereto;

- (iii) a Note in the form of Exhibit A attached hereto for \$2,500,000 principal amount, registered in the name of the Purchaser;
- (iv) Warrants registered in the name of the Purchaser to purchase up to a number of shares of Common Stock equal to 75% of the Purchaser's Subscription Amount divided by the Conversion Price in effect on the Closing Date, having a per share Exercise Price as set forth therein, subject to adjustment as provided herein and therein;
- (v) the A&R Collaboration Agreement in the form attached hereto as Exhibit H, executed by the Company and the Purchaser;
- (vi) [Reserved];
- (vii) the Amendment to Credit Agreement in the form annexed hereto as Exhibit F, executed by the Company and other parties thereto;
- (viii) duly executed written waivers of all existing defaults, if any, under the Rockmore Indebtedness executed by the holders of such indebtedness;
- (ix) [Reserved];
- (x) the Registration Rights Agreement duly executed by the Company;
- (xi) The as filed Series D CoD Amendment in the form of Exhibit I attached hereto;
- (xii) The as filed Series E CoD Amendment in the form of Exhibit J attached hereto;
- (xiii) a certificate, executed on behalf of the Company, by its Principal Executive Officer and Chief Executive Officer (each as defined in the Exchange Act), dated as of the Closing Date, in which such officer shall certify that the conditions set forth in Section 2.3(b) have been fulfilled; and
- (xiv) a certificate, executed on behalf of the Company by its Secretary, containing (i) copies of the text of the resolutions by which the corporate action on the part of the Company necessary to approve this Agreement and the other Transaction Documents and the transactions and actions contemplated hereby and thereby, which shall be accompanied by a certificate of the corporate secretary or assistant corporate secretary of Company dated as of the Closing Date certifying to the Purchaser that such resolutions were duly adopted and have not been amended or rescinded, (ii) an incumbency certificate dated as of the Closing Date executed on behalf of Company by its corporate secretary or one of its assistant corporate secretaries certifying the office of each officer of Company executing this Agreement, or any other agreement, certificate or other instrument executed pursuant hereto, and (iii) copies of (A) the Company's Certificate of Incorporation and bylaws in effect on the Closing Date, and (B) the certificate evidencing the good standing of Company as of a day within five (5) Business Days prior to the Closing Date.

- (b) On or prior to the Closing Date, the Purchaser shall deliver or cause to be delivered to the Company the following:
 - (i) this Agreement and the Registration Rights Agreement, each duly executed by or on behalf of the Purchaser;
 - (ii) the Purchaser's Subscription Amount by wire transfer; and
 - (iii) the Accredited Investor Questionnaire duly executed by the Purchaser.

2.3 Closing Conditions.

- (a) The obligations of the Company hereunder to effect the Closing are subject to the following conditions being met:

- (i) the accuracy in all material respects (determined without regard to any materiality, Material Adverse Effect or other similar qualifiers therein) on the date of this Agreement and the Closing Date of the representations and warranties of the Purchaser contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

- (ii) all obligations, covenants and agreements of the Purchaser under this Agreement required to be performed at or prior to the Closing Date shall have been performed in all material respects; and

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

- (b) The obligations of the Purchaser hereunder to effect the Closing, unless waived by the Purchaser, are subject to the following conditions being met:

- (i) the accuracy in all material respects (determined without regard to any materiality, Material Adverse Effect or other similar qualifiers therein) on the date of this Agreement and Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

- (ii) all Required Approvals, obligations, covenants and agreements of the Company under the Transaction Documents required to be performed or obtained at or prior to the Closing Date shall have been performed or obtained;

- (iii) neither the Company nor any Subsidiary, shall have been or shall be in violation of or default under, and no event shall have occurred that with notice or lapse of time or both would result in a default by the Company or any Subsidiary, nor shall the Company or any Subsidiary have received notice claiming that it is in default under or in violation of the Rockmore Indebtedness unless such violation or default has been validly waived in full to the reasonable satisfaction of Purchaser;

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

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

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

(vii) from November 12, 2018 through the Closing Date, there shall not have occurred any event that has resulted or would result in the adjustment of the conversion price of the Series E Preferred Stock under the terms of the Series E Certificate of Designation, other than the reverse stock split of the Common Stock that was effective on February 22, 2019;

(viii) the Company shall have filed the Series D CoD Amendment, which shall, among other provisions, provide for the conversion of the Series D Convertible Preferred Stock at a conversion price equal to \$2.00 per share, with the Secretary of State of Delaware on or prior to the Closing, which shall continue to be in full force and effect as of the Closing;

(ix) the Company shall have filed the Series E CoD Amendment with the Secretary of State of Delaware on or prior to the Closing, which shall continue to be in full force and effect as of the Closing; and

(x) the Board of Directors and the board of directors of Calm.com, Inc. shall each have approved the Transaction Documents.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

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

(a) Subsidiaries. All of the direct and indirect Subsidiaries of the Company and the Company's ownership interests therein are set forth on Schedule 3.1(a). The Company owns, directly or indirectly, all or a majority of the capital stock or other equity interests of each Subsidiary free and clear of any Liens other than Permitted Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

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

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

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

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other provincial or foreign or domestic federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.6 of this Agreement, (ii) the filing with the Commission pursuant to the Registration Rights Agreement, (iii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Securities and the listing of the Underlying Common Shares for trading thereon in the time and manner required thereby, all of which shall have been effectuated prior to the Closing, (iv) the filing of a Form D with the Commission, and (v) execution of the Amendment to Credit Agreement (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Underlying Common Shares and the Underlying Preferred Shares are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than Permitted Liens and other than restrictions on transfer arising pursuant to applicable securities laws. The Notes and Warrants are duly authorized and, when issued and delivered in accordance with the applicable Transaction Documents, will be enforceable in accordance with their terms and are free and clear of all Liens imposed by the Company other than Permitted Liens and other than restrictions on transfer arising pursuant to applicable securities laws. The Company has reserved from its duly authorized capital stock a number of shares of Series E Preferred Stock for issuance of the Underlying Preferred Shares at least equal to the Required Minimum on the date hereof. The Company has reserved from its duly authorized capital stock a number of shares of Common Stock for issuance of the Underlying Common Shares at least equal to the Required Minimum on the date hereof.

(g) Capitalization. The capitalization of the Company is as set forth on Schedule 3.1(g) of the Disclosure Schedules. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Stock Option Plans, the issuance of shares of Common Stock to employees pursuant to the Stock Option Plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act, all as set forth on Schedule 3.1(g). Except as set forth on Schedule 3.1(g), no Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as disclosed in the SEC Reports or on Schedule 3.1(g) there are no outstanding options, employee or incentive stock option plans, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock, or material contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. Except as set forth on Schedule 3.1(g) or pursuant to the Series D CoD Amendment and Series E CoD Amendment, the issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Purchaser) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in material compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. Except as contemplated by Section 3.1(e), no further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no shareholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's shareholders. Except as set forth on Schedule 3.1(g), the Company is not a party to any Variable Rate Transaction and as of Closing, there will not be outstanding any Equity Line of Credit nor Variable Priced Equity Linked Instruments as of the Closing. Since November 12, 2018, there has not occurred any event that has resulted or would result in the adjustment of the conversion price of the Series E Preferred Stock under the terms of the Series E Certificate of Designation, other than the reverse stock split of the Common Stock that was effective on February 22, 2019.

(h) SEC Reports; Financial Statements. The Company is subject to the reporting requirements under Sections 12(b), and 13(a) or 15(d) under the Exchange Act. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Sections 12(b), 12(g), 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein filed not later than ten (10) days prior to the date hereof, being collectively referred to herein as the “SEC Reports”) on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles (“GAAP”) applied on a consistent basis during the periods involved except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements included in the SEC Reports may not contain all footnotes required by GAAP and are subject to normal, immaterial year-end audit adjustments, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments. The Company is, and has no reason to believe that it will not in the foreseeable future continue to be in compliance with all its reporting requirements under the Securities Act and Exchange Act.

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

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

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company or any Subsidiary, which would reasonably be expected to result in a Material Adverse Effect. Except as disclosed on Section 3.1(k) of the Disclosure Schedules, none of the Company’s or its Subsidiaries’ employees is a member of a union that relates to such employee’s relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. To the Company's knowledge, neither the Company nor any Subsidiary, (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement, or any other agreement or instrument to which it is a party or by which it or any of its properties is bound, except for such defaults or violations as are set forth on Schedule 3.1(l)(i) and have been validly and fully waived, (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as would not reasonably be expected to result in a Material Adverse Effect.

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

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

(o) Intellectual Property.

(i) The term "Intellectual Property Rights" means:

1. the name of the Company and each Subsidiary, all fictional business names, trading names, registered and unregistered trademarks, service marks, and applications of the Company and each Subsidiary (collectively, "Marks");

2. all patents and patent applications of the Company and each Subsidiary (collectively, "Patents");
3. all copyrights in both published works and unpublished works of the Company and each Subsidiary (collectively, "Copyrights");
4. all rights in mask works of the Company and each Subsidiary (collectively, "Rights in Mask Works"); and
5. all know-how, trade secrets, confidential information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints (collectively, "Trade Secrets"); owned, used, or licensed by the Company and each Subsidiary as licensee or licensor

insofar as 1-5 above relate solely to the Company's and Subsidiaries' XpresSpa business and the name of the Company and XpresSpa Subsidiaries and in no event to any of the Company's other Subsidiaries.

(ii) Agreements. Except as set forth in the SEC Reports, there are no outstanding and, to the Company's knowledge, no threatened disputes (in writing) or disagreements with respect to any agreements relating to any Intellectual Property Rights to which the Company is a party or by which the Company is bound.

(iii) Know-How Necessary for the Business. Except as set forth in the SEC Reports, the Intellectual Property Rights are all those necessary for the operation of the Company's and Subsidiaries' XpresSpa business as currently conducted. Each of the Company and each Subsidiary is the owner of all right, title, and interest in and to each of their respective Intellectual Property Rights, free and clear of all Liens (other than Permitted Liens) and adverse claims, and has the right to use all of the Intellectual Property Rights. To the Company's knowledge, no employee of the Company or any Subsidiary has entered into any contract that requires the employee to transfer, assign, or disclose information concerning his work to anyone other than the Company or a Subsidiary.

(iv) Patents. Except as set forth in the SEC Reports, the Company and each Subsidiary is the owner of all right, title and interest in and to each of the Patents related to the Company's XpresSpa business, free and clear of all Liens (other than Permitted Liens) and adverse claims. To the Company's knowledge, all of the issued Patents related to the Company's XpresSpa business are currently in compliance with formal legal requirements (including payment of filing, examination, and maintenance fees and proofs of working or use), are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety days after the Closing Date. No Patent related to the Company's XpresSpa business has been or is now involved in any interference, reissue, reexamination, or opposition proceeding. To the Company's knowledge, none of the products manufactured and sold, nor any process or know-how used, by the Company or any Subsidiary related to the Company's XpresSpa business infringes or is alleged to infringe any patent or other proprietary right of any other Person for which the Company does not have a license.

(v) Trademarks. The Company and each Subsidiary is the owner of all right, title, and interest in and to each of the Marks related to the Company's XpresSpa business, free and clear of all Liens (other than Permitted Liens) and adverse claims. All Marks related to the Company's XpresSpa business that have been registered with the United States Patent and Trademark Office are currently in compliance with all formal legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety days after the Closing Date. No Mark related to the Company's XpresSpa business has been or is now involved in any opposition, invalidation, or cancellation and, to the Company's knowledge, no such action is threatened with respect to any of the Marks related to the Company's XpresSpa business. To the Company's knowledge, none of the Marks related to the Company's XpresSpa business used by the Company and each Subsidiary infringes or is alleged to infringe any trade name, trademark, or service mark of any third party.

(vi) Copyrights. The Company and each Subsidiary is the owner of all right, title, and interest in and to each of the Copyrights related to the Company's XpresSpa business, free and clear of all Liens (other than Permitted Liens) and adverse claims. All the Copyrights related to the Company's XpresSpa business have been registered and are currently in compliance with formal requirements, are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety days after the Closing Date. To the Company's knowledge, no Copyright related to the Company's XpresSpa business is infringed or has been challenged or threatened in any way. To the Company's knowledge, none of the subject matter of any of the Copyrights related to the Company's XpresSpa business infringes or is alleged to infringe any copyright of any third party or is a derivative work based on the work of a third party. All works encompassed by the Copyrights related to the Company's XpresSpa business have been marked with the proper copyright notice.

(vii) Trade Secrets. With respect to each Trade Secret related to the Company's XpresSpa business, the documentation relating to such Trade Secret related to the Company's XpresSpa business is current, accurate, and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual. The Company has taken all reasonable precautions to protect the secrecy, confidentiality, and value of its Trade Secrets related to the Company's XpresSpa business. The Company and each Subsidiary has good title and an absolute (but not necessarily exclusive) right to use the Trade Secrets related to the Company's XpresSpa business. The Trade Secrets related to the Company's XpresSpa business are not part of the public knowledge or literature, and, to the Company's knowledge, have not been used, divulged, or appropriated either for the benefit of any Person (other the Company and each Subsidiary) or to the detriment of the Company and each Subsidiary. No Trade Secret related to the Company's XpresSpa business is subject to any adverse claim or has been challenged or threatened in writing in any way.

(p) Insurance. The Company and the Subsidiaries are currently insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged. A description of the principal terms of the Company's directors and officers insurance policy and the name and contact information for the issuer of such policy are set forth on Section 3.1(p) of the Disclosure Schedule. Neither the Company nor any Subsidiary believes that it will not be able to acquire insurance coverage at reasonable cost as may be necessary to continue its business.

(q) Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of \$100,000 other than for: (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company or any Subsidiary, and (iii) other employee benefits, including stock option agreements under a Stock Option Plan or any other plan of the Company except as disclosed on Schedule 3.1(g).

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

(s) Certain Fees. Except as set forth on Schedule 3.1(s), no brokerage, finder's fees, commissions or due diligence fees are or will be payable by the Company or any Subsidiary to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchaser shall have no obligation with respect to any such fees that may be due in connection with the transactions contemplated by the Transaction Documents.

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

(u) Registration Rights. No Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiary, except for the Purchaser and as set forth in the SEC Reports.

(v) Reporting Company/Shell Company. The Company is a publicly-held company subject to reporting obligations pursuant to Sections 12(g), 13 and 15(d) of the Exchange Act. Pursuant to the provisions of the Exchange Act, the Company has timely filed all reports and other materials required to be filed by the Company thereunder with the SEC during the twelve months preceding the date of this Agreement. The Company has no reason to believe that it will not in the year following the Closing continue to be in compliance with all listing and reporting requirements applicable to the Company as of the Closing Date and thereafter. As of the date of this Agreement and the Closing Date, the Company is not a "shell company" nor a former "shell company" (as defined in Rule 405 of the Securities Act) and has never been a "shell company".

(w) Application of Takeover Protections. The Company and the Board of Directors have taken all necessary action in order to render inapplicable any control share acquisition, business combination (as defined in the DGCL), poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation (or similar charter documents) or the laws of Delaware, including under Section 203(a)(1) of the DGCL that are or could become applicable to the Purchaser as a result of the Purchaser and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchaser's ownership of the Securities.

(x) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided the Purchaser or its agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchaser will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchaser regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, when taken together as a whole, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that the Purchaser is not making and has not made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

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

(z) Solvency. Based on the consolidated financial condition of the Company and Subsidiaries as of the Closing Date, and the Company's good faith estimate of the fair market value of its assets, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder: (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. Schedule 3.1(z) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of \$100,000 in the aggregate (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of \$100,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(aa) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all required United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations and (iii) has set aside on its books provision reasonably adequate for the payment of all material taxes for periods subsequent to the periods to which such returns, reports or declarations apply. Except as set forth on Schedule 3.1(aa), there are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company or of any Subsidiary know of no reasonable basis for any such claim.

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

(cc) Accountants and Lawyers. The Company's accounting firm is set forth on Schedule 3.1(cc) of the Disclosure Schedules. To the knowledge and belief of the Company, such accounting firm: (i) is a registered public accounting firm as required by the Exchange Act and (ii) shall express its opinion with respect to the financial statements to be included in the Company's Annual Report for the fiscal year ending December 31, 2019. There are no disagreements of any kind presently existing between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(dd) Acknowledgment Regarding Purchaser's Purchase of Securities. The Company acknowledges and agrees that the Purchaser is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that the Purchaser is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by the Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchaser's purchase of the Securities. The Company further represents to the Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(ee) Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding (except for Section 4.16 hereof), it is understood and acknowledged by the Company that: (i) the Purchaser has not been asked by the Company to agree, nor has the Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term, (ii) past or future open market or other transactions by the Purchaser, specifically including, without limitation, Short Sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities, (iii) the Purchaser, and counter-parties in "derivative" transactions to which the Purchaser is a party, directly or indirectly, may presently have a "short" position in the Common Stock and (iv) the Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (y) the Purchaser may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Underlying Common Shares and the Underlying Preferred Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing shareholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents. The Company acknowledges that anything to the contrary in the Transaction Documents notwithstanding, the Purchaser may sell long any Underlying Common Shares and the Underlying Preferred Shares it anticipates receiving after conversion of any part of a Note or exercise of a Warrant.

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

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

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

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

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

(kk) No General Solicitation. Neither the Company nor any person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered the Securities for sale only to the Purchaser.

(ll) Indebtedness and Seniority. As of the date hereof, all Indebtedness of the Company and the principal terms thereof are set forth in the SEC Reports. Except as set forth on Schedule 3.1(l), as of the Closing Date, no Indebtedness or other equity of the Company is or will be *pari passu* or senior to the Notes in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(mm) Listing and Maintenance Requirements. The Common Stock is listed on the Nasdaq Capital Market under the symbol “XSPA.” Except as disclosed in the SEC Reports, the Company has not, in the twelve (12) months preceding the date hereof, received notice from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market.

(nn) FDA. The Company has no products subject to the jurisdiction of the U.S. Food and Drug Administration.

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

(pp) Regulatory Matters. The Company and its Subsidiaries have complied in all material respects with all statutes and regulations related to the research, manufacture and sale of its products to the extent applicable to the Company’s and its Subsidiaries’ activities.

(qq) Other Covered Persons. Except as set forth on Schedule 3.1(§) or to attorneys for legal services, the Company is not aware of any person that has been or will be paid (directly or indirectly) remuneration in connection with the sale of any Regulation D Securities pursuant to this Agreement.

(rr) No Outstanding Variable Priced Equity Linked Instruments. As of the Closing Date and for so long as Notes or Warrants are outstanding, the Company will not have outstanding nor issuable any Variable Priced Equity Linked Instruments, nor any debt or equity with anti-dilution, ratchet or reset rights except for the Securities.

(ss) Survival. The foregoing representations and warranties shall survive the Closing.

3.2 Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants as of the date hereof and as of the Closing Date to the Company as follows (unless as of a specific date therein):

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

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

(c) Purchaser Status. At the time the Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it exercises any Warrants or converts any Notes it will be either: (i) an accredited investor (“Accredited Investor”) as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act or (ii) a “qualified institutional buyer” as defined in Rule 144A(a) under the Securities Act. The Purchaser is not required to be registered as a broker-dealer under Section 15 of the Exchange Act. The Purchaser has the authority and is duly and legally qualified to purchase and own the Securities. The Purchaser is able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof. The Purchaser has provided the information in the Accredited Investor Questionnaire attached hereto as Exhibit D (the “Investor Questionnaire”). The information set forth on the signature pages hereto and the Investor Questionnaire regarding the Purchaser is true and complete in all respects. Except as disclosed in the Investor Questionnaire, the Purchaser has had no position, office or other material relationship within the past three years with the Company or Persons (as defined below) known to the Purchaser to be affiliates of the Company, and is not a member of the Financial Industry Regulatory Authority or an “associated person” (as such term is defined under the FINRA Membership and Registration Rules Section 1011).

(d) Experience of the Purchaser. The Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. The Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) Information on Company. The Purchaser has been furnished with or has had access to the SEC Reports. The Purchaser is not deemed to have any knowledge of any information not included in the SEC Reports unless such information is delivered in the manner described in the next sentence. In addition, the Purchaser may have received in writing from the Company such other information concerning its operations, financial condition and other matters as the Purchaser has requested, identified thereon as OTHER WRITTEN INFORMATION (such other information is collectively, the “*Other Written Information*”), and considered all factors the Purchaser deems material in deciding on the advisability of investing in the Securities. The Purchaser was afforded (i) the opportunity to ask such questions as the Purchaser deemed necessary of, and to receive answers from, representatives of the Company concerning the merits and risks of acquiring the Securities; (ii) the right of access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable the Purchaser to evaluate the Securities; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to acquiring the Securities.

(f) Compliance with Securities Act; Reliance on Exemptions. The Purchaser understands and agrees that the Securities have not been registered under the Securities Act or any applicable state securities laws, by reason of their issuance in a transaction that does not require registration under the Securities Act, and that such Securities must be held indefinitely unless a subsequent disposition is registered under the Securities Act or any applicable state securities laws or is exempt from such registration. The Purchaser understands and agrees that the Securities are being offered and sold to the Purchaser in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and regulations and that the Company is relying in part upon the truth and accuracy of, and the Purchaser's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of the Purchaser to acquire the Securities.

(g) Communication of Offer. The Purchaser is not purchasing the Securities as a result of any "general solicitation" or "general advertising," as such terms are defined in Regulation D, which includes, but is not limited to, any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or on the internet or broadcast over television, radio or the internet or presented at any seminar or any other general solicitation or general advertisement.

(h) No Governmental Review. The Purchaser understands that no United States federal or state agency or any other governmental or state agency has passed on or made recommendations or endorsement of the Securities or the suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the Offering.

(i) No Conflicts. The execution, delivery and performance of this Agreement and performance under the other Transaction Documents and the consummation by the Purchaser of the transactions contemplated hereby and thereby or relating hereto or thereto do not and will not (i) result in a violation of the Purchaser's charter documents, bylaws or other organizational documents, if applicable, (ii) conflict with nor constitute a default (or an event which with notice or lapse of time or both would become a default) under any agreement to which the Purchaser is a party, nor (iii) result in a violation of any law, rule, or regulation, or any order, judgment or decree of any court or governmental agency applicable to the Purchaser or its properties (except for such conflicts, defaults and violations as would not, individually or in the aggregate, have a material adverse effect on the Purchaser). The Purchaser is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under this Agreement or perform under the other Transaction Documents nor to purchase the Securities in accordance with the terms hereof, provided that for purposes of the representation made in this sentence, the Purchaser is assuming and relying upon the accuracy of the relevant representations and agreements of the Company herein.

(j) Certain Transactions and Confidentiality. Other than consummating the transactions contemplated hereunder, the Purchaser has not directly or indirectly, nor has any Person acting on behalf of or pursuant to any understanding with the Purchaser, executed any purchases or sales, including Short Sales, of the securities of the Company during the period commencing as of the time that the Purchaser first received a written term sheet from the Company or any other Person representing the Company setting forth the material terms of the transactions contemplated hereby and ending immediately prior to the execution hereof.

(k) Non-Affiliate Status. The Purchaser represents and warrants that: (i) it is not an “affiliate” of the Company as such term is defined in Rule 405 promulgated under the Securities Act or Rule 12b-2 promulgated under the Exchange Act; (ii) during the last six months the Purchaser has not engaged in any transactions in violation of Section 16 of the Exchange Act; and (iii) the consummation of the transactions contemplated hereby will not result in any violation of Section 16 of the Exchange Act by the Purchaser.

(l) Survival. The foregoing representations and warranties shall survive the Closing.

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

**ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES**

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

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

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

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

(d) Legend Removal. Certificates evidencing the Underlying Common Shares shall not contain any legend (“Unlegended Shares”) (including the legend set forth in Section 4.1(b) hereof): (i) while a registration statement covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Underlying Common Shares pursuant to Rule 144, (iii) if such Underlying Common Shares are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Underlying Common Shares and without volume or manner-of-sale restrictions or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent promptly after the Effective Date if required by the Transfer Agent to effect the removal of the legend hereunder. If all or any Notes are converted or any portion of a Warrant is exercised at a time when there is an effective registration statement to cover the resale of the Underlying Common Shares, or if such Underlying Common Shares may be sold under Rule 144 or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Underlying Common Shares shall be issued free of all legends. The Company agrees that following such time as such legend is no longer required under this Section 4.1(c), it will, no later than two (2) Trading Days following the delivery by the Purchaser to the Company or the Transfer Agent of a certificate representing Underlying Common Shares, as applicable, issued with a restrictive legend (such second (2nd) Trading Day, the “Legend Removal Date”), deliver or cause to be delivered to the Purchaser a certificate representing such shares that is free from all restrictive and other legends. The Company may not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this Section 4. Certificates for Underlying Common Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser’s prime broker with the Depository Trust Company System as directed by the Purchaser.

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

(f) DWAC. In lieu of delivering physical certificates representing the Unlegended Shares, upon request of the Purchaser, so long as the certificates therefor do not bear a legend and the Purchaser is not obligated to return such certificate for the placement of a legend thereon, the Company shall cause its transfer agent to electronically transmit the Unlegended Shares by crediting the account of the Purchaser's prime broker with the Depository Trust Company through its Deposit Withdrawal At Custodian system, provided that the Company's Common Stock is DTC eligible and the Company's transfer agent participates in the Deposit Withdrawal at Custodian system. Such delivery must be made on or before the Legend Removal Date.

(g) Injunction. In the event the Purchaser shall request delivery of Unlegended Shares as described in this Section 4.1 and the Company is required to deliver such Unlegended Shares, the Company may not refuse to deliver Unlegended Shares based on any claim that the Purchaser or anyone associated or affiliated with the Purchaser has not complied with the Purchaser's obligations under the Transaction Documents, or for any other reason, unless, an injunction or temporary restraining order from a court, on notice, restraining and or enjoining delivery of such Unlegended Shares shall have been sought and obtained by the Company and the Company has posted a surety bond for the benefit of the Purchaser in the amount of the greater of (i) 120% of the amount of the aggregate purchase price of the Underlying Common Shares to be subject to the injunction or temporary restraining order, or (ii) the VWAP of the Common Stock on the trading day before the issue date of the injunction multiplied by the number of Unlegended Shares to be subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the dispute and the proceeds of which shall be payable to the Purchaser to the extent Purchaser obtains judgment in Purchaser's favor.

(h) Buy-In. In addition to any other rights available to Purchaser, if the Company fails to deliver to a Purchaser Unlegended Shares as required pursuant to this Agreement and after the Legend Removal Date the Purchaser, or a broker on the Purchaser's behalf, purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Purchaser of the shares of Common Stock which the Purchaser was entitled to receive in unlegended form from the Company (a "Buy-In"), then the Company shall promptly pay in cash to the Purchaser (in addition to any remedies available to or elected by the Purchaser) the amount, if any, by which (A) the Purchaser's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (B) the aggregate purchase price of the shares of Common Stock delivered to the Company for reissuance as Unlegended Shares, together with interest thereon at a rate of 15% per annum accruing until such amount and any accrued interest thereon is paid in full (which amount shall be paid as liquidated damages and not as a penalty). For example, if a Purchaser purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to \$10,000 of purchase price of Underlying Common Shares delivered to the Company for reissuance as Unlegended Shares, the Company shall be required to pay the Purchaser \$1,000, plus interest, if any. The Purchaser shall provide the Company written notice indicating the amounts payable to the Purchaser in respect of the Buy-In.

(i) Plan of Distribution. The Purchaser agrees with the Company that the Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a registration statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

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

4.3 Furnishing of Information; Public Information.

(a) Until the earliest of the time that (i) the Purchaser owns no Securities or (ii) the Warrants have expired, the Company covenants to file all periodic reports with the Commission pursuant to the Exchange Act and maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act after such time as the Company initially becomes subject to such requirements and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act and timely file all reports that would be required to be filed by an issuer subject to Section 12(b) or 12(g) of the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

(b) At any time commencing on the Closing Date and ending at such time that all of the Securities may be sold without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company shall fail for any reason to satisfy the current public information requirement under Rule 144(c) (a “Public Information Failure”) then, in addition to the Purchaser’s other available remedies, the Company shall pay to the Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or impairment of its ability to sell the Securities, an amount in cash equal to 1.0% of the aggregate principal amount of Notes and accrued interest thereon, and aggregate Exercise Price of Warrant Shares held by the Purchaser on the day of a Public Information Failure and on every thirtieth (30th) day (pro-rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date the Public Information Failure is cured and (b) such time that such public information is no longer required for the Purchaser to transfer the Underlying Common Shares pursuant to Rule 144. The payments to which the Purchaser shall be entitled pursuant to this Section 4.3(b) are referred to herein as “Public Information Failure Payments.” Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3rd) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of 1.0% per month (prorated for partial months) until paid in full. Nothing herein shall limit the Purchaser’s right to pursue actual damages for the Public Information Failure, and the Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

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

4.5 Conversion and Exercise Procedures. Each of the form of Notice of Exercise included in the Warrants and the form of Notice of Conversion included in the Notes set forth the totality of the procedures required of the Purchaser in order to exercise the Warrants or convert the Notes. No additional legal opinion, other information or instructions shall be required of the Purchaser to exercise its Warrants or convert its Notes. The Company shall honor exercises of the Warrants and conversions of the Notes and shall deliver Underlying Preferred Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.6 Securities Laws Disclosure; Publicity. The Company shall on or before the third Trading Day following the Closing Date, file a Current Report on Form 8-K including the Transaction Documents as exhibits thereto with the Commission ("Form 8-K"). A form of the Form 8-K is annexed hereto as Exhibit E. Such Exhibit E will be identical to the Form 8-K which will be filed with the Commission except for the omission of signatures thereto by the Company. From and after the filing of the Form 8-K, the Company represents to the Purchaser that it shall have publicly disclosed all material, non-public information delivered to the Purchaser by the Company or any Subsidiary, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. The Company and the Purchaser shall consult with each other in issuing any press releases with respect to the transactions contemplated hereby, and neither the Company nor the Purchaser shall issue any press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of the Purchaser, or without the prior consent of the Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of the Purchaser, or include the name of the Purchaser in any filing with the Commission or any regulatory agency or Trading Market unless the name of the Purchaser is already included in the body of the Transaction Documents, without the prior written consent of the Purchaser, except: (a) as required by federal securities law in connection with the filing of final Transaction Documents with the Commission and any registration statement contemplated by the Registration Rights Agreement, and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchaser with prior notice of such disclosure permitted under this clause (b).

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

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

4.9 Use of Proceeds. The Company shall use the net proceeds from the sale of the Securities hereunder substantially for the purposes set forth on Schedule 4.9 hereto and shall not use such proceeds: (a) for the satisfaction of any portion of the Company’s debt except as disclosed on Schedule 4.9 (other than payment of trade payables in the ordinary course of the Company’s business and consistent with prior practices), (b) for the redemption of any Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation or (d) in violation of FCPA or OFAC regulations.

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

4.11 Reservation and Listing of Securities.

(a) As of the date hereof, the Company, ignoring any conversion or exercise, has reserved for each Purchaser and the Company shall continue to reserve and keep available at all times, the “Required Minimum”, free of preemptive rights. If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date (an “Authorized Share Failure”), then the Board of Directors shall use commercially reasonable efforts to amend the Company’s certificate of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum plus such other amount as may be required for the Company’s other purposes, and reserve the Required Minimum on behalf of the Purchaser, as soon as possible and in any event not later than the 60th day after such date. 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 Company shall hold a meeting of its shareholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, the Company shall provide each stockholder with a proxy statement and shall use its commercially reasonable efforts to solicit its shareholders’ approval of such increase in authorized shares of Common Stock and to cause its board of directors to recommend to the shareholders that they approve such proposal. Notwithstanding the foregoing, if any such time of an Authorized Share Failure, the Company is able to obtain the written consent of a majority of the shares of its issued and outstanding Common Stock to approve the increase in the number of authorized shares of Common Stock without soliciting its shareholders, the Company may satisfy this obligation by obtaining such consent and submitting for filing with the SEC an Information Statement on Schedule 14C.

(b) The Company shall prior to the Closing: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market as soon as possible thereafter, (iii) provide to the Purchaser evidence of such listing or quotation and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. The Company will take all action necessary to continue the listing or quotation and trading of its Common Stock until the later of (i) at least five (5) years after the Closing Date, and (ii) for so long as the Notes or Warrants are outstanding, and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Trading Market. In the event the aforescribed listing is not continuously maintained for five (5) years after the Closing Date and for so long as Notes or Warrants are outstanding (a "Listing Default"), then in addition to any other rights the Purchaser may have hereunder or under Applicable Law, on the first day of a Listing Default and on each monthly anniversary of each such Listing Default date (if the applicable Listing Default shall not have been cured by such date) until the applicable Listing Default is cured, the Company shall pay to each Purchaser an amount in cash, as partial liquidated damages and not as a penalty, equal to 1.0% of the aggregate outstanding Note principal and accrued interest, conversion price of Conversion Shares and purchase price of Warrant Shares held by the Purchaser or which may be acquired upon exercise of Warrants on the day of a Listing Default and on every thirtieth day (pro-rated for periods less than thirty days) thereafter until the date such Listing Default is cured. If the Company fails to pay any liquidated damages pursuant to this Section in a timely manner, the Company will pay interest thereon at a rate of 1.0% per month (pro-rated for partial months) to the Purchaser.

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

4.13 Subsequent Equity Sales. From the date hereof until the date the Purchaser (or permitted assignee) holds less than ten percent (10%) of the Notes originally issued to the Purchaser, the Company will not, without the consent of Purchaser, enter into any Equity Line of Credit or similar agreement, issue or agree to issue floating or Variable Priced Equity Linked Instruments nor issue or agree to issue any of the foregoing (subject to adjustment for stock splits, distributions, dividends, recapitalizations and the like) (collectively, a “Variable Rate Transaction”). For purposes hereof, “Equity Line of Credit” shall include any transaction involving a written agreement between the Company and an investor or underwriter whereby the Company has the right to “put” its securities to the investor or underwriter over an agreed period of time and at an agreed price or price formula, and “Variable Priced Equity Linked Instruments” shall include: (A) any debt or equity securities which are convertible into, exercisable or exchangeable for, or carry the right to receive additional shares of Common Stock or Common Stock Equivalents or any of the foregoing at a price that can be reduced either (1) at any conversion, exercise or exchange rate or other price that is based upon and/or varies with the trading prices of or quotations for Common Stock at any time after the initial issuance of such debt or equity security, or (2) with a fixed conversion, exercise or exchange price that is subject to being reset at some future date at any time after the initial issuance of such debt or equity security due to a change in the market price of the Company’s Common Stock since date of initial issuance, or upon the issuance of any debt, equity or Common Stock Equivalent, and (B) any amortizing convertible security which amortizes prior to its maturity date, where the Company is required or has the option to (or any investor in such transaction has the option to require the Company to) make such amortization payments in shares of Common Stock which are valued at a price that is based upon and/or varies with the trading prices of or quotations for Common Stock at any time after the initial issuance of such debt or equity security (whether or not such payments in stock are subject to certain equity conditions). For purposes of determining the total consideration for a convertible instrument (including a right to purchase equity of the Company) issued, subject to an original issue or similar discount or which principal amount is directly or indirectly increased after issuance, the consideration will be deemed to be the actual net cash amount received by the Company in consideration of the original issuance of such convertible instrument and reduced by any consideration or value given by the Company to the purchaser of such convertible instrument. Until the receipt of Shareholder Approval, the Company will not issue or amend the terms of any securities or Common Stock Equivalents or of any agreement outstanding or in effect as of the date of this Agreement pursuant to which same were or may be acquired without the consent of Purchaser, if the result of such issuance or amendment would be to issue Common Stock or to reduce the effective price per share of Common Stock to less than the higher of the Per Common Share Conversion Price or Warrant Exercise Price in effect at the time of such issuance or amendment.

4.14 [Reserved].

4.15 Capital Changes. In no event will the Company reduce the par value of the Common Stock to an amount less than the lesser of (i) the Conversion Price divided by five (5), or (ii) Warrant Exercise Price, then in effect.

4.16 Certain Transactions and Confidentiality. The Purchaser covenants that neither it, nor any Affiliate acting on the Purchaser's behalf or pursuant to any understanding with the Purchaser will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to a press release or Form 8-K as described in Section 4.6. The Purchaser covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to a press release or Form 8-K as described in Section 4.6, the Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents and the Disclosure Schedules. Notwithstanding the foregoing, and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (i) the Purchaser does not make any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to a press release or Form 8-K as described in Section 4.6, (ii) the Purchaser shall not be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with Applicable Law from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to a press release or Form 8-K, and (iii) the Purchaser shall not have any duty of confidentiality to the Company or its Subsidiaries after the filing of the Form 8-K. Notwithstanding the foregoing, in the case of the Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of the Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of the Purchaser's assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

4.17 [Reserved]

4.18 [Reserved].

4.19 Maintenance of Property/Insurance. The Company shall, and shall cause each Subsidiary to, keep all of its property, which is necessary or useful to the conduct of its business, in good working order and condition, ordinary wear and tear excepted and insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary for the businesses of the Company and Subsidiary. From and after the Closing Date and for so long as any Securities are held by a Purchaser, the Company will maintain directors and officers insurance coverage at least equal to the aggregate Subscription Amount.

4.20 Preservation of Corporate Existence. The Company shall preserve and maintain its corporate existence, rights, privileges and franchises in the jurisdiction of its incorporation, and qualify and remain qualified, as a foreign entity in each jurisdiction in which such qualification is necessary in view of its business or operations and where the failure to qualify or remain qualified might reasonably have a Material Adverse Effect upon the financial condition, business or operations of the Company taken as a whole.

4.21 DTC Program. At all times that Notes or Warrants are outstanding, the Company shall employ as the transfer agent for its Common Stock and Underlying Common Shares a participant in the Depository Trust Company Automated Securities Transfer Program and cause the Common Stock and Underlying Common Shares to be transferable pursuant to such program.

4.22 Reimbursement. If the Purchaser becomes involved in any capacity in any Proceeding by or against any Person who is a stockholder of the Company (except as a result of sales, pledges, margin sales and similar transactions by the Purchaser to or with any current stockholder), solely as a result of the Purchaser's acquisition of the Securities under this Agreement, the Company will reimburse the Purchaser for its reasonable legal and other expenses (including the cost of any investigation preparation and travel in connection therewith) incurred in connection therewith, as such expenses are incurred. The reimbursement obligations of the Company under this paragraph shall be in addition to any liability which the Company may otherwise have, shall extend upon the same terms and conditions to any Affiliates of the Purchaser who are actually named in such action, proceeding or investigation, and partners, directors, agents, employees and controlling persons (if any), as the case may be, of the Purchaser and any such Affiliate, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Company, the Purchaser and any such Affiliate and any such Person. The Company also agrees that neither the Purchaser nor any such Affiliates, partners, directors, agents, employees or controlling persons shall have any liability to the Company or any Person asserting claims on behalf of or in right of the Company solely as a result of acquiring the Securities under this Agreement.

4.23 [Reserved].

4.24 Indebtedness. For so long as any Note is outstanding, the Company on a consolidated basis with the Subsidiaries will not incur nor be liable for any Indebtedness other than Permitted Indebtedness, without the consent of Purchaser.

4.25 Notice of Disqualification Events. The Company will notify the Purchaser in writing, prior to the Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person not otherwise disclosed herein or in the SEC Reports.

4.26 Duration of Undertakings. Unless otherwise stated in this Article IV, all of the Company's undertakings, obligations and responsibilities set forth in Article IV of this Agreement shall remain in effect for so long as any Securities remain outstanding.

4.27 Shareholder Approval. The Company undertakes to use commercially reasonable efforts within one hundred (120) days after the Closing Date to obtain the consent of its shareholders (the "Shareholder Approval") for the reduction of the exercise price of the Series E Preferred Stock pursuant to the Series E CoD Amendment, the issuance of any additional shares of its Common Stock that would be issued pursuant to Section 5 of the Notes or Section 2 of the Warrants, any other shares of Common Stock or other securities issuable to the Purchasers pursuant to the Transaction Documents and any other provisions of the Transaction Documents stated therein to be contingent upon consent of the shareholders of the Company; *provided*, that in no event shall the Company seek the consent of its shareholders for the approval of the reduction in the exercise or conversion prices of any other security of the Company, whether or not outstanding on the date hereof, unless such approval is conditional upon simultaneous receipt of the Shareholder Approval. The Company represents and warrants that not less than the amount of Underlying Preferred Shares set forth on Schedule 4.27 may be immediately issued to the Purchaser upon Closing without the requirement of Shareholder Approval or any other approval.

**ARTICLE V.
MISCELLANEOUS**

5.1 Termination. This Agreement may be terminated by the Purchaser by written notice to the other parties, if the Closing has not been consummated on or before the Termination Date; provided, however, that such termination will not affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. At the Closing, the Company has agreed to pay Davis Polk & Wardwell for the legal fees in connection with Davis Polk & Wardwell's representation of Calm.com, Inc. in the amount of \$30,000. Except as expressly set forth in the Transaction Documents and on Schedule 3.1(s), each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall reimburse the Purchaser for all expenses incurred in connection with UCC, lien, judgment, tax and similar searches conducted in connection with the Offering. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion or exercise notice delivered by the Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchaser. The Purchaser acknowledges that it has been advised to seek the advice of its own attorneys.

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

5.4 Notices. All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be (i) personally served, (ii) deposited in the mail, registered or certified, return receipt requested, postage prepaid, (iii) delivered by reputable air courier service with charges prepaid, or (iv) transmitted by hand delivery or telegram, or (v) transmitted via electronic mail, in each case addressed as set forth below or to such other address as such party shall have specified most recently by written notice. Any notice or other communication required or permitted to be given hereunder shall be deemed effective (a) upon hand delivery at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received), (b) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur or (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient on a Business Day, and on the next Business Day if sent after normal business hours of the recipient on a non-Business Day. The addresses for such communications shall be: (i) if to the Company, to: XpresSpa Group, Inc, 780 Third Avenue, 12th Floor, New York, NY 10017, Attn: Edward Jankowski, CEO, email: notices@xpresspagroup.com, with a copy by email only to: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Chrysler Center, 666 3rd Avenue, New York, NY 10017, Attn: Kenneth R. Koch, Esq., email: krkoch@mintz.com, and (ii) if to the Purchaser, to: Calm.com, Inc., 77 Geary Street, 3rd Floor, San Francisco, CA 94108, a copy shall also be given to Davis Polk & Wardwell LLP, 1600 El Camino Real, Menlo Park, CA 94025, Attn: Alan F. Denenberg and Donald K. Lang, email: alan.denenberg@davispolk.com and donald.lang@davispolk.com.

5.5 Amendments: Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Purchaser. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

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

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

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

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

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

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

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

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

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

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

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

5.17 [Reserved].

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

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

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

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

5.22 Equitable Adjustment. Trading volume amounts, price/volume amounts, the amount of Warrants, the amount of shares of Common Stock identified in this Agreement, Conversion Price, Exercise Price, the Underlying Common Shares, the Underlying Preferred Shares and similar figures in the Transaction Documents shall be equitably adjusted (but without duplication) to offset the effect of stock splits, similar events and as otherwise described in this Agreement, Note and Warrants.

(Signature Pages Follow)

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

XPRESSPA GROUP, INC.

By: _____

Name: Douglas Satzman
Title: CEO

CALM.COM, INC.

By: _____

Name: Alex Tew
Title: Co-CEO

EXHIBITS AND SCHEDULES

Exhibit A	Form of Note
Exhibit B	Form of Warrant
Exhibit C	Form of Legal Opinion
Exhibit D	Form of Investor Questionnaire
Exhibit E	Form of Form 8-k
Exhibit F	Amendment to Credit Agreement
Exhibit G	Registration Rights Agreement
Exhibit H	Amendment to the Collaboration Agreement
Exhibit I	Series D CoD Amendment
Exhibit J	Series E CoD Amendment

EXHIBIT D

**ACCREDITED INVESTOR QUESTIONNAIRE
IN CONNECTION WITH INVESTMENT IN UNSECURED CONVERTIBLE NOTE
DUE MAY 31, 2022 OF XPRESSPA GROUP, INC.,
A DELAWARE CORPORATION
PURSUANT TO SECURITIES PURCHASE AGREEMENT DATED JULY 1, 2019**

TO : XpresSpa Group, Inc.
780 Third Avenue, 12th Floor
New York, NY 10017
Email: dsatzman@xpresspa.com

INSTRUCTIONS

PLEASE ANSWER ALL QUESTIONS. If the appropriate answer is “None” or “Not Applicable”, so state. Please print or type your answers to all questions. Attach additional sheets if necessary to complete your answers to any item.

Your answers will be kept strictly confidential at all times. However, XpresSpa Group, Inc. (the “Company”) may present this Questionnaire to such parties as it deems appropriate in order to assure itself that the offer and sale of securities of the Company will not result in a violation of the registration provisions of the Securities Act of 1933, as amended, or a violation of the securities laws of any state.

1. Please provide the following information:

Name: _____

Name of additional purchaser: _____
(Please complete information in Question 5)

Date of birth, or if other than an individual, year of organization or incorporation:

2. Residence address, or if other than an individual, principal office address:

Telephone number: _____

Social Security Number: _____

Taxpayer Identification Number: _____

3. Business address: _____

Business telephone number: _____

4. Send mail to: Residence _____ Business _____

5. With respect to tenants in common, joint tenants and tenants by the entirety, complete only if information differs from that above:

Residence address: _____

Telephone number: _____

Social Security Number: _____

Taxpayer Identification Number: _____

Business address: _____

Business telephone number: _____

Send mail to: Residence _____ Business _____

6. Please describe your present or most recent business or occupation and indicate such information as the nature of your employment, how long you have been employed there, the principal business of your employer, the principal activities under your management or supervision and the scope (e.g. dollar volume, industry rank, etc.) of such activities:

7. Please state whether you (i) are associated with or affiliated with a member of the Financial Industry Regulatory Association, Inc. ("FINRA"), (ii) are an owner of stock or other securities of FINRA member (other than stock or other securities purchased on the open market), or (iii) have made a subordinated loan to any FINRA member:

Yes

No

(a) If you answered yes to any of (i) – (iii) above, please indicate the applicable answer and briefly describe the facts below:

8A. Applicable to Individuals ONLY. Please answer the following questions concerning your financial condition as an Accredited Investor (within the meaning of Rule 501 of Regulation D). If the purchaser is more than one individual, each individual must initial an answer where the question indicates a "yes" or "no" response and must answer any other question fully, indicating to which individual such answer applies. If the purchaser is purchasing jointly with his or her spouse, one answer may be indicated for the couple as a whole:

8.1 Does your net worth* (or joint net worth with your spouse) exceed \$1,000,000?

Yes

No

8.2 Did you have an individual income** in excess of \$200,000 or joint income together with your spouse in excess of \$300,000 in each of the two most recent years and do you reasonably expect to reach the same income level in the current year?

Yes

No

8.3 Are you an executive officer of the Company?

Yes

No

* For purposes hereof, net worth shall be deemed to include ALL of your assets, liquid or illiquid MINUS any liabilities.

** For purposes hereof, the term "income" is not limited to "adjusted gross income" as that term is defined for federal income tax purposes, but rather includes certain items of income which are deducted in computing "adjusted gross income". For investors who are salaried employees, the gross salary of such investor, minus any significant expenses personally incurred by such investor in connection with earning the salary, plus any income from any other source including unearned income, is a fair measure of "income" for purposes hereof. For investors who are self-employed, "income" is generally construed to mean total revenues received during the calendar year minus significant expenses incurred in connection with earning such revenues.

8.B Applicable to Corporations, Partnerships, Trusts, Limited Liability Companies and other Entities ONLY:

The purchaser is an Accredited Investor because the purchaser falls within at least one of the following categories (Check all appropriate lines):

- (i) a bank as defined in Section 3(a)(2) of the Act or a savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity;
- (ii) a broker-dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended;
- (iii) an insurance company as defined in Section 2(13) of the Act;
- (iv) an investment company registered under the Investment Company Act of 1940, as amended (the "Investment Act") or a business development company as defined in Section 2(a)(48) of the Investment Act;
- (v) a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended;
- (vi) a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, where such plan has total assets in excess of \$5,000,000;
- (vii) an employee benefit plan within the meaning of Title 1 of the Employee Retirement Income Security Act of 1974, as amended (the "Employee Act"), where the investment decision is made by a plan fiduciary, as defined in Section 3(21) of the Employee Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or an employee benefit plan that has total assets in excess of \$5,000,000, or a self-directed plan the investment decisions of which are made solely by persons that are Accredited Investors;
- (viii) a private business development company, as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, as amended;
- (ix) an organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation, a Massachusetts or similar business trust, or a partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$5,000,000;
- (x) a trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a "sophisticated" person, as described in Rule 506(b)(2)(ii) promulgated under the Act, who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment;

____ (xi) an entity in which all of the equity investors are persons or entities described above (“Accredited Investors”). ALL EQUITY OWNERS MUST COMPLETE “EXHIBIT A” ATTACHED HERETO.

9.A Do you have sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks associated with investing in the Company?

Yes

No

ANSWER QUESTION 9B ONLY IF THE ANSWER TO QUESTION 9A WAS “NO.”

9.B If the answer to Question 9A was “NO,” do you have a financial or investment adviser (a) that is acting in the capacity as a purchaser representative and (b) who has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks associated with investing in the Company?

Yes

No

If you have a financial or investment adviser(s), please identify each such person and indicate his or her business address and telephone number in the space below. (Each such person must complete, and you must review and acknowledge, a separate Purchaser Representative Questionnaire which will be supplied at your request).

10. You have the right, will be afforded an opportunity, and are encouraged to investigate the Company and review relevant factors and documents pertaining to the officers of the Company, and the Company and its business and to ask questions of a qualified representative of the Company regarding this investment and the properties, operations, and methods of doing business of the Company.

Have you or has your purchaser representative, if any, conducted any such investigation, sought such documents or asked questions of a qualified representative of the Company regarding this investment and the properties, operations, and methods of doing business of the Company?

Yes

No

If so, briefly describe:

If so, have you completed your investigation and/or received satisfactory answers to your questions?

Yes

No

11. Do you understand the nature of an investment in the Company and the risks associated with such an investment?

Yes

No

12. Do you understand that there is no guarantee of any financial return on this investment and that you will be exposed to the risk of losing your entire investment?

Yes

No

13. Do you understand that this investment is not liquid?

Yes

No

14. Do you have adequate means of providing for your current needs and personal contingencies in view of the fact that this is not a liquid investment?

Yes

No

15. Are you aware of the Company's business affairs and financial condition, and have you acquired all such information about the Company as you deem necessary and appropriate to enable you to reach an informed and knowledgeable decision to acquire the Interests?

Yes

No

16. Do you have a "pre-existing relationship" with the Company or any of the officers of the Company?

Yes

No

(For purposes hereof, "pre-existing relationship" means any relationship consisting of personal or business contacts of a nature and duration such as would enable a reasonably prudent investor to be aware of the character, business acumen, and general business and financial circumstances of the person with whom such relationship exists.)

If so, please name the individual or other person with whom you have a pre-existing relationship and describe the relationship:

17. Exceptions to the representations and warranties made in Section 3.2 of the Securities Purchase Agreement (if no exceptions, write "none" – if left blank, the response will be deemed to be "none"): _____

Dated: _____, 2019

If purchaser is one or more individuals (all individuals must sign):

(Type or print name of prospective purchaser)

Signature of prospective purchaser

Social Security Number

(Type or print name of additional purchaser)

Signature of spouse, joint tenant, tenant in common or other signature, if required

Social Security Number

Annex A

Definition of Accredited Investor

The securities will only be sold to investors who represent in writing in the Securities Purchase Agreement that they are Accredited Investors, as defined in Regulation D, Rule 501 under the Act which definition is set forth below:

1. A natural person whose net worth, or joint net worth with spouse, at the time of purchase exceeds \$1 million (excluding home); or
2. A natural person whose individual gross income exceeded \$200,000 or whose joint income with that person's spouse exceeded \$300,000 in each of the last two years, and who reasonably expects to exceed such income level in the current year; or
3. A trust with total assets in excess of \$5 million, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person described in Regulation D; or
4. A director or executive officer of the Company; or
5. The investor is an entity, all of the owners of which are Accredited Investors; or
6. (a) bank as defined in Section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Act, (b) any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, (c) an insurance Company as defined in Section 2(13) of the Act, (d) an investment Company registered under the Investment Company Act of 1940 or a business development Company as defined in Section 2(a)(48) of such Act, (e) a Small Business Investment Company licensed by the United States Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958, (f) an employee benefit plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, if such plan has total assets in excess of \$5 million, (g) an employee benefit plan within the meaning of Title I of the Employee Retirement Income Securities Act of 1974, and the employee benefit plan has assets in excess of \$5 million, or the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such act, that is either a bank, savings and loan institution, insurance Company, or registered investment advisor, or, if a self-directed plan, with an investment decisions made solely by persons that are Accredited Investors, (h) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, or (i) an organization described in Section 501(c)(3) of the Internal Revenue code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with assets in excess of \$5 million.

EXHIBIT "A" TO ACCREDITED INVESTOR QUESTIONNAIRE

ACCREDITED CORPORATIONS, PARTNERSHIPS, LIMITED LIABILITY COMPANIES, TRUSTS OR OTHER ENTITIES INITIALING QUESTION 8B(xi) MUST PROVIDE THE FOLLOWING INFORMATION.

I hereby certify that set forth below is a complete list of all equity owners in _____ [NAME OF ENTITY], a [TYPE OF ENTITY] formed pursuant to the laws of the State of . I also certify that **EACH SUCH OWNER HAS INITIALED THE SPACE OPPOSITE HIS OR HER NAME** and that each such owner understands that by initialing that space he or she is representing that he or she is an accredited individual investor satisfying the test for accredited individual investors indicated under "Type of Accredited Investor."

signature of authorized corporate officer, general partner or trustee

Name of Equity Owner

Type of Accredited Investor¹

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

¹ Indicate which Subparagraph of 8.1 - 8.3 the equity owner satisfies.

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), dated as of July 8, 2019, by and among XpresSpa Group, Inc., a Delaware corporation, with headquarters located at 780 Third Avenue, 12th Floor, New York, NY 10017 (the “**Company**”), and Calm.com, Inc., a Delaware corporation (the “**Purchaser**”).

WHEREAS:

A. In connection with the Securities Purchase Agreement by and between the parties hereto of even date herewith (the “**Securities Purchase Agreement**”), the Company has agreed, upon the terms and subject to the conditions of the Securities Purchase Agreement, to issue and sell to the Purchaser, (i) an unsecured convertible Note, which will be convertible into shares of the Company’s Series E Convertible Preferred Stock in accordance with the terms of the Note and (ii) Series E Warrants to purchase shares of the Company’s Common Stock, which will be exercisable in accordance with the terms of the Warrants.

B. In accordance with the terms of the Securities Purchase Agreement, the Company has agreed to provide Purchaser with certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the “**1933 Act**”), and applicable state securities laws.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Purchaser hereby agree as follows:

1. *Definitions.*

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

(a) “**Additional Effective Date**” means the date the Additional Registration Statement is declared effective by the SEC.

(b) “**Additional Effectiveness Deadline**” means the date which is the earlier of (x) (i) in the event that the Additional Registration Statement is not subject to a full review by the SEC, twenty (20) calendar days after the earlier of the Additional Filing Date and the Additional Filing Deadline or (ii) in the event that the Additional Registration Statement is subject to a full review by the SEC, seventy-five (75) calendar days after the earlier of the Additional Filing Date and the Additional Filing Deadline and (y) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Additional Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Additional Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Additional Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(c) **“Additional Filing Date”** means the date on which the Additional Registration Statement is filed with the SEC.

(d) **“Additional Filing Deadline”** means if Cutback Shares are required to be included in any Additional Registration Statement, thirty (30) calendar days after the date the Purchaser gives notice to the Company that substantially all of the Purchaser’s Registrable Securities registered under the immediately preceding Registration Statement are sold.

(e) **“Additional Registrable Securities”** means, (i) any Cutback Shares not previously included on a Registration Statement and (ii) any capital stock of the Company issued or issuable with respect to the Underlying Common Shares, the Warrants or the Cutback Shares, as applicable, as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise without regard to any limitations on exercise of the warrants.

(f) **“Additional Registration Statement”** means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of any Additional Registrable Securities.

(g) **“Additional Required Registration Amount”** means (I) any Cutback Shares not previously included on a Registration Statement, all subject to adjustment as provided in Section 2(f) or (11) such other amount as may be permitted by the staff of the SEC pursuant to Rule 415, without regard to any limitations on exercise of the Warrants.

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

(i) **“Closing Date”** shall have the meaning set forth in the Securities Purchase Agreement.

(j) **“Cutback Shares”** means any of the Initial Required Registration Amount or the Additional Required Registration Amount (without regard to clause (II) in the definition thereof) of Registrable Securities not included in all Registration Statements previously declared effective as contemplated hereunder as a result of a limitation on the maximum number of shares of Common Stock of the Company permitted to be registered by the staff of the SEC pursuant to Rule 415.

(k) **“Effective Date”** means the Initial Effective Date and the Additional Effective Date, as applicable.

(l) **“Effectiveness Deadline”** means the Initial Effectiveness Deadline and the Additional Effectiveness Deadline, as applicable.

(m) **“Eligible Market”** means the Principal Market, The New York Stock Exchange, Inc., the NYSE American, The Nasdaq Capital Market, The Nasdaq Global Select Market, The Nasdaq Global Market, the OTC Bulletin Board, the OTCQB or the OTCQX (or any successor to any of the foregoing).

(n) **“Filing Deadline”** means the Initial Filing Deadline and the Additional Filing Deadline, as applicable.

(o) **“Initial Effective Date”** means the date that the Initial Registration Statement has been declared effective by the SEC.

(p) **“Initial Effectiveness Deadline”** means the date which is the earlier of (x) (i) in the event that the Initial Registration Statement is not subject to a full review by the SEC, sixty (60) calendar days after the Initial Filing Deadline, or (ii) in the event that the Initial Registration Statement is subject to a full review by the SEC, one hundred (100) calendar days after the Initial Filing Deadline, and the (y) fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Initial Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Initial Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Initial Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(q) **“Initial Filing Date”** means the date on which the Initial Registration Statement is filed with the SEC.

(r) **“Initial Filing Deadline”** means forty-five (45) days after the date of this Agreement.

(s) **“Initial Registrable Securities”** means (i) 125% of the Underlying Common Shares issued or issuable upon conversion of the Note or upon exercise of the Warrant and (ii) any capital stock of the Company issued or issuable with respect to the Underlying Common Shares, the Notes, or the Warrants as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise without regard to any limitations on conversion of the Notes or exercise of the Warrants.

(t) **“Initial Registration Statement”** means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of the Initial Registrable Securities.

(u) **“Initial Required Registration Amount”** means (I) the number of Underlying Common Shares, without regard to any limitations on exercise of the Warrants or (II) such other amount as may be permitted by the staff of the SEC pursuant to Rule 415.

(v) **“Purchaser”** means the Purchaser or any transferee or assignee thereof to whom the Purchaser assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

(w) **“Person”** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(x) **“Principal Market”** means The Nasdaq Capital Market.

(y) **“register,” “registered,”** and **“registration”** refer to a registration effected by preparing and filing one or more Registration Statements (as defined below) in compliance with the 1933 Act and pursuant to Rule 415, and the declaration or ordering of effectiveness of such Registration Statement(s) by the SEC.

(z) **“Registrable Securities”** means the Initial Registrable Securities and the Additional Registrable Securities.

(aa) **“Registration Statement”** means the Initial Registration Statement and the Additional Registration Statement, as applicable.

(bb) **“Required Holders”** means holders of at least a majority of the Registrable Securities, which majority must include Purchaser for so long as Purchaser beneficially owns at least ten percent (10%) of the Underlying Common Shares.

(cc) **“Required Registration Amount”** means either the Initial Required Registration Amount or the Additional Required Registration Amount, as applicable.

(dd) **“Rule 415”** means Rule 415 promulgated under the 1933 Act or any successor rule providing for offering securities on a continuous or delayed basis.

(ee) **“SEC”** means the United States Securities and Exchange Commission.

(ff) **“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 Common Stock is then traded; provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for 4.5 or more hours or any day that the Common Stock is 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).

2. *Registration.*

(a) *Initial Mandatory Registration.* Promptly following the Closing Date, the Company shall prepare, and, as soon as practicable but in no event later than the Initial Filing Deadline, file with the SEC the Initial Registration Statement on Form S-3 covering the resale of all of the Initial Registrable Securities. In the event that Form S-3 is unavailable for such a registration, the Company shall use Form S-1 or such other form as is available for such a registration on another appropriate form reasonably acceptable to the Purchaser, subject to the provisions of Section 2(e). The Initial Registration Statement prepared pursuant hereto shall register for resale at least the number of shares of Common Stock equal to the Initial Required Registration Amount determined as of the date the Initial Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(f). The Initial Registration Statement shall contain (except if otherwise directed by the Purchaser) the “Plan of Distribution” and “Selling Shareholders” sections in substantially the form attached hereto as Exhibit B, with such modifications as may be required by law. The Company shall use its commercially reasonable efforts to have the Initial Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Initial Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Initial Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Initial Registration Statement. The Company represents and warrants that Cutbacks will not apply with respect to at least 384,965 Initial Registrable Securities and that not fewer than 384,965 of Initial Registrable Securities must be included for registration in the Initial Registration Statement.

(b) *Additional Mandatory Registrations.* The Company shall prepare, and, as soon as practicable but in no event later than the Additional Filing Deadline, file with the SEC an Additional Registration Statement on Form S-3 covering the resale of all of the Additional Registrable Securities not previously registered on a Registration Statement hereunder. To the extent the staff of the SEC does not permit the Additional Required Registration Amount to be registered on an Additional Registration Statement, the Company shall file Additional Registration Statements successively trying to register on each such Additional Registration Statement the maximum number of remaining Additional Registrable Securities until the Additional Required Registration Amount has been registered with the SEC; provided that after two rejections by the SEC of Additional Registration Statements, the Company shall not be required to file Additional Registration Statements more frequently than once per sixty day period commencing subsequent to the second rejection. In the event that Form S-3 is unavailable for such a registration, the Company shall use Form S-1 or such other form as is available for such a registration on another appropriate form reasonably acceptable to the Purchaser, subject to the provisions of Section 2(e). Each Additional Registration Statement prepared pursuant hereto shall register for resale at least that number of shares of Common Stock equal to the Additional Required Registration Amount determined as of the date such Additional Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(f). Each Additional Registration Statement shall contain (except if otherwise directed by the Purchaser) the “*Plan of Distribution*” and “*Selling Shareholders*” sections in substantially the form attached hereto as Exhibit B, with such modifications as may be required by law. The Company shall use its commercially reasonable efforts to have each Additional Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Additional Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Additional Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Additional Registration Statement.

(c) [Reserved].

(d) *Legal Counsel*. Subject to Section 5 hereof, the Purchaser shall have the right, at its own expense, to select one legal counsel to review and oversee any registration pursuant to this Section 2 (“**Legal Counsel**”), which shall be Davis Polk & Wardwell LLP, or such other counsel as thereafter designated by the Purchaser. The Company and Legal Counsel shall reasonably cooperate with each other in performing the Company’s obligations under this Agreement.

(e) *Ineligibility for Form S-3*. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on Form S-1 or another appropriate form reasonably acceptable to the Purchaser and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as any such Registration Statement on Form S-3 filed by the Company covering the Registrable Securities has been declared effective by the SEC.

(f) *Sufficient Number of Shares Registered*. In the event the number of shares available under a Registration Statement filed pursuant to Section 2(a) or Section 2(b) is insufficient to cover the Required Registration Amount of Registrable Securities required to be covered by such Registration Statement, the Company shall amend the applicable Registration Statement, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than fifteen (15) calendar days after the necessity therefor arises. The Company shall use its commercially reasonable efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. For purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed “insufficient to cover all of the Registrable Securities” if at any time the number of shares of Common Stock available for resale under the Registration Statement is less than the Required Registration Amount. The calculation set forth in the foregoing sentence shall be made without regard to any limitations on the exercise of the Warrants and such calculation shall assume the Warrants are then exercisable in full into shares of Common Stock at the then prevailing Exercise Price (as defined in the Warrants).

(g) *Effect of Failure to File and Obtain and Maintain Effectiveness of Registration Statement.* If (i) the Initial Registration Statement when declared effective fails to register the Initial Required Registration Amount of Initial Registrable Securities (a “**Registration Failure**”), (ii) a Registration Statement covering all of the Registrable Securities required to be covered thereby and required to be filed by the Company pursuant to this Agreement is (A) not filed with the SEC on or before the applicable Filing Deadline (a “**Filing Failure**”) or (B) not declared effective by the SEC on or before the applicable Effectiveness Deadline, (an “**Effectiveness Failure**”) or (iii) on any day after the applicable Effective Date, sales of all of the Registrable Securities required to be included on such Registration Statement cannot be made (other than during an Allowable Grace Period (as defined in Section 3(r))) pursuant to such Registration Statement or otherwise (including, without limitation, because of the suspension of trading or any other limitation imposed by an Eligible Market, a failure to keep such Registration Statement effective, a failure to disclose such information as is necessary for sales to be made pursuant to such Registration Statement, a failure to register a sufficient number of shares of Common Stock or a failure to maintain the listing of the Common Stock) (a “**Maintenance Failure**” and collectively with a Registration Failure, a Filing Failure, and an Effectiveness Failure, the “**Failures**” and each a “**Failure**”), then, as partial relief for the damages to any holder by reason of a Failure (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance or the additional obligation of the Company to register any Cutback Shares), the Company shall pay to each holder of Registrable Securities relating to such Registration Statement an amount in cash equal to one percent (1.0%) of the aggregate Subscription Amount (as defined in the Securities Purchase Agreement) of the Purchaser’s Registrable Securities whether or not included in such Registration Statement, on each of the following dates: (i) the day of a Registration Failure, (ii) the day of a Filing Failure; (iii) the day of an Effectiveness Failure; (iv) the initial day of a Maintenance Failure; (v) on the thirtieth day after the date of a Registration Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Registration Failure is cured; (vi) on the thirtieth day after the date of a Filing Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Filing Failure is cured; (vii) on the thirtieth day after the date of an Effectiveness Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Effectiveness Failure is cured; and (viii) on the thirtieth day after the initial date of a Maintenance Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Maintenance Failure is cured; provided however, in the event that there shall be more than one Failure occurring simultaneously, the 1.0% shall apply in the aggregate (e.g., during any single or multiple Failure, 1% shall be due, however 1% shall not be due “per Failure” if the Failures are simultaneous and for so long as such Failures are simultaneous). The payments to which a holder shall be entitled pursuant to this Section 2(g) are referred to herein as “**Registration Delay Payments.**” Registration Delay Payments shall be paid on the earlier of (I) the dates set forth above and (II) the third Business Day after the event or failure giving rise to the Registration Delay Payments is cured. In the event the Company fails to make Registration Delay Payments in a timely manner, such Registration Delay Payments shall bear interest at the rate of one percent (1%) per month (prorated for partial months) until paid in full. Notwithstanding anything to the contrary contained herein, Registration Delay Payments shall (i) not, in the aggregate, exceed seven percent (7%) of the aggregate Purchase Price, (ii) cease to accrue when all of the Registrable Securities may be sold pursuant to Rule 144 without any restrictions or limitations, and (iii) cease to accrue upon the termination of the Registration Period (as defined below).

(h) *Limitation on Other Registration Statements.* Other than to register securities issued or issuable in connection with (i) that certain Securities Purchase Agreement, dated May 15, 2018, as subsequently amended by and between the Company and each purchaser identified on the signature pages thereto (the “**Palladium SPA**”), (ii) that certain reload offer letter, dated as of July 8, 2019 and (iii) that certain Fourth Amendment to Credit Agreement, dated as of July 8, 2019, by and between XpresSpa Holdings, LLC and B3D, LLC, the Company shall not file another registration statement under the 1933 Act prior to the earlier of (a) ninety (90) days after the date that the Initial Registration Statement is declared effective by the SEC and (b) the end of the Registration Period (as defined in Section 3(a)) nor include in the Initial Registration Statement or Additional Registration any securities except the Registrable Securities and Additional Registrable Securities; *provided that*, this Section 2(h) shall not prevent the Company from (a) filing a registration statement on Form S-4 or Form S-8 with the SEC at any time beginning thirty (30) calendar days after the initial filing of the Initial Registration Statement with the SEC or (b) filing a universal shelf registration statement on Form S-3.

3. *Related Obligations.*

At such time as the Company is obligated to file a Registration Statement with the SEC pursuant to Section 2(a), 2(b), 2(e) or 2(f), the Company will use its commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to the Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement relating to the Registrable Securities to become effective as soon as practicable after such filing (but in no event later than the Effectiveness Deadline). The Company shall keep each Registration Statement effective pursuant to Rule 415 at all times until the earlier of (i) the date that is two (2) years and six (6) months after the Closing Date or (ii) the date on which the Purchaser shall have sold all of the Registrable Securities required to be covered by such Registration Statement (the “**Registration Period**”). The Company shall ensure that each Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading. The term “commercially reasonable efforts” shall mean, among other things, that the Company shall submit to the SEC, within two (2) Business Days after the later of the date that (i) the Company learns that no review of a particular Registration Statement will be made by the staff of the SEC or that the staff has no further comments on a particular Registration Statement, as the case may be, and (ii) the approval of Legal Counsel pursuant to Section 3(c) (which approval is promptly sought), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than two (2) Business Days after the submission of such request. The Company shall respond in writing to comments made by the SEC in respect of a Registration Statement as soon as practicable, but in no event later than fifteen (15) calendar days after the receipt of comments by or notice from the SEC that an amendment is required in order for a Registration Statement to be declared effective.

(b) The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep such Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-K, Form 10-Q, Form 8-K or any analogous report under the Securities Exchange Act of 1934, as amended (the “1934 Act”), the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

(c) The Company shall (A) permit Legal Counsel to review and comment upon (i) a Registration Statement at least three (3) Business Days prior to its filing with the SEC and (ii) all amendments and supplements to all Registration Statements (except for those filed by reason of the Company filing Annual Reports on Form 10 - K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports) within a reasonable number of days prior to their filing with the SEC, (B) permit the Purchaser to review and comment on the “Plan of Distribution” and “Selling Shareholders” sections of the Registration Statement and all amendments and supplements to the Registration Statement to the extent any changes are made to those sections, and (C) not file any Registration Statement or amendment or supplement thereto in a form to which Legal Counsel reasonably objects; provided however, that if the delay in filing the Registration Statement is due to Legal Counsel’s or the Purchaser’s unreasonable objections (and unreasonable refusal to allow the Company to file the Registration Statement) then in such event, no Registration Failure (or similar event that triggers a Registration Delay Payment) shall be deemed to have occurred with such delay arising from Legal Counsel’s unreasonable objections, or solely with respect to the Purchaser, arising from the Purchaser’s unreasonable objections. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto without the prior approval of Legal Counsel, which consent shall not be unreasonably withheld; provided however, that if the delay in filing the effectiveness of the Registration Statement is due to Legal Counsel’s unreasonable objections (and unreasonable refusal to allow the Registration Statement to become effective) then in such event, no Effectiveness Failure (or similar event that triggers a Registration Delay Payment) shall be deemed to have occurred. The Company shall furnish to Legal Counsel, without charge, copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any Registration Statement. The Company shall reasonably cooperate with Legal Counsel in performing the Company’s obligations pursuant to this Section 3.

(d) [Reserved].

(e) The Company shall use its commercially reasonable efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by the Purchaser of the Registrable Securities covered by a Registration Statement under such other securities or “blue sky” laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify Legal Counsel of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or “blue sky” laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(f) The Company shall notify Legal Counsel in writing of the happening of any event, as promptly as practicable but not later than the first Business Day after becoming aware of such event, (i) as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), or (ii) that results in the lack of effectiveness of any Registration Statement, and, subject to Section 3(r), promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, or lack of effectiveness of any Registration Statement. The Company shall also promptly notify Legal Counsel in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel by email on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, and (iii) of the Company’s reasonable determination that a post-effective amendment to a Registration Statement would be appropriate. By 9:30 a.m. New York City time on the day following the date any post-effective amendment has become effective, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Registration Statement.

(g) The Company shall use its commercially reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify Legal Counsel of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(h) If the Purchaser is required by the SEC to be described in the Registration Statement as an underwriter or the Company and the Purchaser agree that it should be identified as an underwriter of Registrable Securities in the Registration Statement and the Registration Statement is so modified, the Company shall furnish to the Purchaser, on the date of the effectiveness of the Registration Statement and thereafter from time to time on such dates as the Purchaser may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Purchaser, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Purchaser.

(i) If the Purchaser is required under applicable securities laws to be described in the Registration Statement as an underwriter or the Company and the Purchaser agree that it could reasonably be deemed to be an underwriter of Registrable Securities, the Company shall make available for inspection by (i) the Purchaser, (ii) Legal Counsel and (iii) one firm of accountants or other agents retained by the Purchaser (collectively, the "**Inspectors**"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "**Records**"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, that each Inspector shall agree to hold in strict confidence and shall not make any disclosure (except if the Purchaser agrees to keep such Records confidential and not to trade on such information) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement. The Purchaser agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and the Purchaser) shall be deemed to limit the Purchaser's ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(j) The Company shall hold in confidence and not make any disclosure of information concerning the Purchaser provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning the Purchaser is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to the Purchaser and allow the Purchaser a reasonable period of time, at the Purchaser's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(k) The Company shall use its commercially reasonable efforts either to (i) cause all of the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange or (ii) secure the inclusion for quotation of all of the Registrable Securities on the Principal Market or (iii) if, despite the Company's commercially reasonable efforts, the Company is unsuccessful in satisfying the preceding clauses (i) and (ii), to secure the inclusion for quotation on another Eligible Market for such Registrable Securities and, without limiting the generality of the foregoing, to use its commercially reasonable efforts to arrange for at least two market makers to register with the Financial Industry Regulatory Authority, Inc. ("FINRA") as such with respect to such Registrable Securities. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(k).

(l) The Company shall cooperate with the Purchaser, and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Purchaser may reasonably request and registered in such names as the Purchaser may request.

(m) If reasonably requested by the Purchaser, the Company shall as soon as practicable (i) incorporate in a prospectus supplement or post-effective amendment such information as the Purchaser reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement if reasonably requested by the Purchaser.

(n) The Company shall use its commercially reasonable efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(o) Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of preventing the Company from performing its obligations hereunder.

(p) The Company shall otherwise use its commercially reasonable efforts to comply in all material respects with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(q) Within two (2) Business Days after a Registration Statement which covers Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Purchaser) confirmation that such Registration Statement has been declared effective by the SEC in the form attached hereto as Exhibit A.

(r) Notwithstanding anything to the contrary herein, at any time after the Effective Date, the Company may delay the disclosure of material, non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the Board of Directors of the Company and its counsel, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a “**Grace Period**”); provided, that the Company shall promptly (i) notify the Purchaser in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material, non-public information to the Purchaser) and the date on which the Grace Period will begin, and (ii) notify the Purchaser in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed ten (10) consecutive Trading Days and during any three hundred sixty five (365) day period such Grace Periods shall not exceed an aggregate of twenty (20) Trading Days and the first day of any Grace Period must be at least five (5) Trading Days after the last day of any prior Grace Period (each, an “**Allowable Grace Period**”). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Purchaser receives the notice referred to in clause (i) and shall end on and include the later of the date the Purchaser receives the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(g) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 3(f) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of the Purchaser in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which the Purchaser has entered into a contract for sale, prior to the Purchaser’s receipt of the notice of a Grace Period and for which the Purchaser has not yet settled.

(s) Except as required by applicable law, neither the Company nor any Subsidiary or affiliate thereof shall identify the Purchaser as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market and the Purchaser being deemed an underwriter by the SEC shall not relieve the Company of any obligations it has under this Agreement or any other Transaction Document (as defined in the Securities Purchase Agreement); *provided*, however, that the foregoing shall not prohibit the Company from including the disclosure found in the "Plan of Distribution" Section attached hereto as Exhibit B in the Registration Statement. If the Company is required by law or in response to a comment received by the SEC to identify the Purchaser as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market, prior to so identifying the Purchaser, the Company shall promptly notify each the Purchaser of the legal requirement and give each the Purchaser a reasonable opportunity to persuade the applicable regulator that said disclosure is not required. If the Purchaser is unable to eliminate the legal requirement to be identified as an underwriter, the Purchaser shall have five (5) Business Days, or such shorter time as required by the applicable regulator or applicable law, to consent to such disclosure or to agree to withdraw as a selling shareholder under the Registration Statement. If the Purchaser agrees to withdraw as a selling shareholder under the Registration Statement, the Company shall not be responsible for any such Failures with respect to the Purchaser.

4. *Obligations of the Purchaser.*

(a) At least five (5) Business Days prior to the first anticipated Filing Date of a Registration Statement, the Company shall notify the Purchaser in writing of the information the Company requires from the Purchaser to be included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Securities of the Purchaser that the Purchaser shall timely furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required by the Company to effect and maintain the effectiveness of the registration of such Registrable Securities and shall timely execute such documents in connection with such registration as the Company may reasonably request.

(b) The Purchaser agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder.

(c) The Purchaser agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of 3(f) (a “**No Sale Notice**”), the Purchaser will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until the Purchaser’s receipt of copies of the supplemented or amended prospectus as contemplated by Section 3(g) or the first sentence of 3(f) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of the Purchaser in accordance with the terms of the Securities Purchase Agreement in connection with any sale of Registrable Securities with respect to which the Purchaser has entered into a contract for sale prior to the Purchaser’s receipt of a notice from the Company of the happening of any event of the kind described in Section 3(g) or the first sentence of 3(f) and for which the Purchaser has not yet settled.

(d) The Purchaser covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption there from in connection with sales of Registrable Securities pursuant to the Registration Statement.

5. *Expenses of Registration.*

All reasonable expenses, other than underwriting or broker-dealer discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company shall be paid by the Company.

6. *Indemnification.*

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend the Purchaser, the directors, officers, partners, members, employees, agents, representatives of, and each Person, if any, who controls the Purchaser within the meaning of the 1933 Act or the 1934 Act (each, an “**Indemnified Person**”), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys’ fees, amounts paid in settlement or expenses, joint or several (collectively, “**Claims**”), incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto (“**Indemnified Damages**”), to which any of them may reasonably become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other “blue sky” laws of any jurisdiction in which Registrable Securities are offered (“**Blue Sky Filing**”), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, “**Violations**”). Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished to the Company by such Indemnified Person for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto; and (ii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Purchaser pursuant to Section 9.

(b) In connection with any Registration Statement in which the Purchaser is participating, the Purchaser agrees to hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an “**Indemnified Party**”), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with information furnished to the Company by the Purchaser expressly for use in connection with such Registration Statement; and, subject to Section 6(c), the Purchaser shall reimburse the Indemnified Party for any legal or other expenses reasonably incurred by an Indemnified Party in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed; provided, further, however, that the Purchaser shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to the Purchaser as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Purchaser pursuant to Section 9

(c) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires and has acknowledged its indemnification obligations hereunder in writing, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for all such Indemnified Person or Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the Indemnified Person or Indemnified Party, as applicable, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. In the case of an Indemnified Person, legal counsel referred to in the immediately preceding sentence shall be selected by the Purchaser. The Indemnified Party or Indemnified Person shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Party or Indemnified Person which relates to such action or Claim. The indemnifying party shall keep the Indemnified Party or Indemnified Person fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Party or Indemnified Person, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party or Indemnified Person of a release from all liability in respect to such Claim or litigation and such settlement shall not include any admission as to fault on the part of the Indemnified Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Party or Indemnified Person with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is prejudiced in its ability to defend such action.

(d) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(e) The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. *Contribution.*

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement.

8. *Reports Under the 1934 Act.*

With a view to making available to the Purchaser the benefits of Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit the Purchaser to sell securities of the Company to the public without registration ("**Rule 144**"), the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to the Purchaser so long as the Purchaser owns Registrable Securities, promptly upon request, a written statement by the Company, if true, that it has complied with the reporting requirements of the 1933 Act and the 1934 Act and that it has satisfied the current public information provisions set forth in Rule 144.

9. *Assignment of Registration Rights.*

The rights under this Agreement shall be automatically assignable by the Purchaser to any transferee of all or any portion of the Purchaser's Registrable Securities if: (i) the Purchaser agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act or applicable state securities laws; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein; and (v) such transfer shall have been made in accordance with the applicable requirements of the Securities Purchase Agreement.

10. *Amendment of Registration Rights.*

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Holders. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon the Purchaser and the Company. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Registrable Securities. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to this Agreement.

11. *Miscellaneous.*

(a) A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) personally served, (ii) deposited in the mail, registered or certified, return receipt requested, postage prepaid, (iii) delivered by reputable air courier service with charges prepaid, or (iv) transmitted by hand delivery or telegram, or (v) transmitted via electronic mail, in each case addressed as set forth below or to such other address as such party shall have specified most recently by written notice. Any notice or other communication required or permitted to be given hereunder shall be deemed effective upon hand delivery at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received), on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur or (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient on a Business Day, and on the next Business Day if sent after normal business hours of the recipient on a non-Business Day. The addresses and email addresses for such communications shall be:

If to the Company:

XpresSpa Group, Inc.
780 Third Avenue, 12th Floor
New York, NY 10017
Attn: Douglas Satzman, CEO
Email: notices@xpresspagroup.com

With a copy (for informational purposes only) to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. |
Chrysler Center
666 3rd Avenue
New York, NY 10017
Attn: Kenneth R. Koch, Esq.
Email: krkoch@mintz.com

If to the Transfer Agent:

American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219
Fax: (718) 921-8334

If to Legal Counsel:

Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, CA 94025
Attn: Alan Denenberg and Don Lang
Email: alan.denenberg@davispolk.com
and donald.lang@davispolk.com

If to the Purchaser:

Calm.com, Inc.
77 Geary Street, 3rd Floor
San Francisco, CA 94108

With a copy (for informational purposes only) to Legal Counsel

Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's email containing the time, date, and transmission message or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(e) If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(f) This Agreement, the other Transaction Documents (as defined in the Securities Purchase Agreement) and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

(g) Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by email transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) All consents and other determinations required to be made by the Purchaser pursuant to this Agreement shall be made, unless otherwise specified in this Agreement, by the Purchaser.

(l) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

(m) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(n) [Reserved].

(o) Legal Counsel may resign as Legal Counsel on five (5) calendar days' prior notice to the Company and the Purchaser.

* * * * *

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

XPRESSPA GROUP, INC.

By: _____

Name: Douglas Satzman
Title: CEO

CALM.COM, INC.

By: _____

Name: Alex Tew
Title: Co-CEO

FOURTH AMENDMENT TO CREDIT AGREEMENT

This Fourth Amendment to Credit Agreement (the “Fourth Amendment”) is made as of the 8th day of July, 2019, but shall be effective on the Fourth Amendment Effective Date, as defined below, by and between **XpresSpa Holdings, LLC**, a Delaware limited liability company (the “Borrower”) and **B3D, LLC**, a North Carolina limited liability company (the “Lender”).

WHEREAS, the Borrower and Lender are parties to that certain Credit Agreement dated April 22, 2015, as amended by the First Amendment to Credit Agreement and Waiver dated August 8, 2016, as assigned (together with the Existing Note, the Security Agreement, and each Guarantee) with Borrower’s consent by Lender’s predecessor, Rockmore Investment Master Fund Ltd. (“Rockmore”) to Lender on February 7, 2017, as amended by the Second Amendment dated May 10, 2017, as amended by the Third Amendment dated as of May 11, 2018, and as further as amended, restated, amended and restated extended, renewed, replaced, supplemented or otherwise modified from time to time (as amended, the “Credit Agreement”);

WHEREAS, pursuant to the Credit Agreement the Lender agreed to provide credit facilities to Borrower, as defined therein; and

WHEREAS, Borrower’s obligations under the Credit Agreement are evidenced by the Amended and Restated Note dated August 8, 2016, in the principal amount of \$6,500,000 executed by Borrower (the “Existing Note”) and are secured by a first priority lien on and security interest in substantially all of the assets of the Borrower; and

WHEREAS, Borrower’s obligations under the Credit Agreement and the Existing Note are guaranteed by the Subsidiary Guarantors and further secured by a first priority lien on and security interest in substantially all of the assets of the Subsidiary Guarantors; and

WHEREAS, Borrower’s obligations under the Credit Agreement are the Existing Note are also guaranteed XpresSpa Group, Inc., formerly known as FORM Holdings Corp., a Delaware corporation (the “Parent”), of which Borrower is a wholly-owned subsidiary, pursuant to the Amended and Restated Guaranty by Parent of even date herewith (the “Parent Guaranty”), and such obligations are further secured by a pledge of its equity in the Borrower pursuant to the Pledge by Parent dated May 30, 2019, as amended and restated by Parent of even date herewith (the “Pledge”); and

WHEREAS, (i) the report of Parent’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 which note violated Borrower’s covenants under Section 6.01(a) of the Credit Agreement which, among other things, might result in Lender being entitled to declare an Event of Default under the Credit Agreement and the Existing Note and (ii) any default directly resulting from the failure to comply with Section 8(a)(i) of those certain Secured Convertible Notes due November 17, 2019 by the Parent with respect to the periods ending April 30, 2019 and May 31, 2019 (together, the “Existing Defaults”); and

WHEREAS, the Borrower has requested that Lender waive the Existing Defaults and further agree to make certain modifications to the terms of the Credit Agreement and the Existing Note including, among other things postponement of certain interest payments, extension of the Maturity Date; and

WHEREAS, the Lender is willing to grant such waiver subject to the terms and conditions contained herein, including, but not limited to, the increasing the principal of the Loan due and payable to Lender by the amount of five hundred thousand (\$500,000.00) dollars (the "Note Increase"), payable as provided herein below.

WHEREAS, the Borrower and Lender accordingly wish to amend certain terms of the Credit Agreement and Existing Note in accordance with this Fourth Amendment.

NOW, THEREFORE, in consideration of the foregoing and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lender and the Borrower agree as follows:

1. **Recitals.** The Recitals to this Fourth Amendment are incorporated herein by reference and form a part hereof.
2. **Note Increase; Note.** In consideration for Lender's waiver of the Existing Defaults and Lender's agreement to enter into this Fourth Amendment, Borrower agrees to pay Lender the Note Increase. The Note Increase shall be added to, and form a part of, the outstanding principal amount due for the Loan under the Credit Agreement and related instruments and shall be reflected in the Second Amended and Restated Note in the principal amount of \$7,000,000, of even date herewith, executed by Borrower in the form annexed hereto as **Exhibit A** (as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Replacement Note").
3. **Waiver of Existing Defaults.** Upon the Amendment Effective Date and Borrower's fulfillment of all conditions contained herein for the effectiveness hereof, Lender hereby waives the Existing Defaults; *provided, however*, that Lender's waiver is limited solely to the Existing Defaults. Notwithstanding anything to the contrary contained herein, such waiver shall not constitute (a) a modification any of the terms, conditions or covenants of the Credit Agreement or any of the Loan Documents, all of which remain in full force and effect, (b) a waiver, release or limitation of the exercise by Lender of any of its rights and remedies thereunder, all of which are hereby expressly reserved; or (c) a waiver of any future defaults, if any, including without limitation, any violation of Section 6.01(a) of the Credit Agreement. The waiver herein shall not relieve or release the Borrower, the Parent, or any Subsidiary Guarantor from any of its or their respective duties, obligations, covenants or agreements under the Credit Agreement, or any of the Loan Documents or from the consequences of any Events of Default thereunder, except as expressly described herein. The waiver under this Section 3 shall not constitute a waiver of any other Events of Default or defaults, whether now existing or which may occur after the date of this Fourth Amendment.

4. **Amendments.**

(a) *Commitment Amount.* Section 1.01 Definitions is hereby amended by deleting the definition corresponding to the following definition and substituting in its place the following definition:

““*Commitment Amount*”: \$7,000,000.00.”

(b) *Maturity Date.* Section 1.01 Definitions is hereby amended by deleting the definition corresponding to the following definition and substituting in its place the following definition:

““*Maturity Date*”: May 31, 2021.”

(c) *Credit Party.* Section 1.01 Definitions is hereby amended by deleting the definition corresponding to the following definition and substituting in its place the following definition:

““*Credit Party*”: The Borrower, the Parent and the Guarantors.”

(d) *Parent.* Section 1.01 Definitions is hereby amended by inserting the following definition thereto in proper alphabetical order as follows:

““*Parent*”: XpresSpa Group, Inc., formerly known as FORM Holdings Corp., a Delaware corporation, of which Borrow is a wholly-owned subsidiary.”

(e) *Interest Deferment Date.* Section 1.01 Definitions is hereby amended by inserting the following definition thereto in proper alphabetical order as follows:

““*Interest Deferment Date*”: the earlier of (i) October 7, 2019 or (ii) the date upon which the Shareholder Approval is obtained.”

(f) *Fourth Amendment.* Section 1.01 Definitions is hereby amended by inserting the following definition thereto in proper alphabetical order as follows:

““*Fourth Amendment*”: that certain Fourth Amendment to Credit Agreement, dated as of July 1, 2019, and effective as of the Fourth Amendment Effective Date, by and between Borrower and Lender.”

(g) *Fourth Amendment Effective Date.* Section 1.01 Definitions is hereby amended by inserting the following definition thereto in proper alphabetical order as follows:

“*Fourth Amendment Effective Date*”: the date on which Fourth the Amendment shall have become effective in accordance with its terms.”

(h) *Shareholder Approval*. Section 1.01 Definitions is hereby amended by inserting the following definition thereto in proper alphabetical order as follows:

“*Shareholder Approval*”: the consent of Parent’s shareholders pursuant to Nasdaq Listing Rule 5635(d) for the issuance of all the shares of its Common Stock that could be issued pursuant to Sections 2 and 7 of the Note.”

(i) *Loan*. Section 2.01 Loan is hereby deleted and replaced with the following:

“Subject to the terms and conditions of this Agreement, the Lender agrees to make a loan (the “Loan”) to the Borrower through an advance of \$6,000,000 on the Effective Date of this Agreement, and \$500,000, which, on August 8, 2016, was added to the Commitment Amount and the principal balance of the Note, and an additional \$500,000, which, on the Fourth Amendment Effective Date, was added to the Commitment Amount and the principal balance of the Note.”

(j) *Note*. At all times from the Fourth Amendment Effective Date and thereafter, the definition of “Note” in Section 2.02 shall be deemed to mean the Replacement Note and all references in the Credit Agreement and any other Loan Document to the “Note” shall be deemed to be a reference to the Replacement Note.

(k) *Voluntary Prepayments*. Section 2.03(a) Voluntary Prepayments. is hereby amended by deleting the current Section 2.03(a) and substituting in its place the following:

“(a) Voluntary Prepayments. The Borrower may, at its option, prepay the Loan in full or in part at any time and from time to time by notifying the Lender in writing not later than the date of such prepayment specifying the principal amount of the Loan to be prepaid and the date of prepayment. Each such notice shall be irrevocable and the amount specified in each such notice shall be due and payable on the date specified. Each partial prepayment of the Loan pursuant to this Subsection shall be in an aggregate principal amount of \$100,000 or an integral multiple of \$50,000 in excess thereof, or, if less than \$100,000, the outstanding principal balance of the Loan. In the event the Borrower prepays the Loan in full before the date that is fifteen (15) Business Days prior to the Maturity Date, the Borrower shall pay a premium equal to the greater of (i) four percent (4%) or (ii) the Black Scholes Value of the outstanding principal amount subject to such prepayment. Notwithstanding anything to the contrary in the foregoing or in any other Loan Document, there shall be no premium or penalty payable by the Borrower in the event that the Borrower either (y) prepays the Loan in full on or after the date that is fifteen (15) Business Days prior to the Maturity Date and before the Maturity Date or (z) repays the Loan in full on the Maturity Date. Simultaneously with each prepayment of the Loan, the Borrower shall prepay all accrued and unpaid interest on the amount prepaid through the date of prepayment. If no Event of Default exists and if the proceeds arising out of any insurance claim or series of related claims do not exceed \$250,000, loss payments in each instance will be applied by the applicable Credit Party to the repair and/or replacement of property with respect to which the loss was incurred to the extent reasonably feasible, and any loss payments or the balance thereof remaining, to the extent not so applied, shall be payable to the applicable Credit Party; provided, however, that payments received by any Credit Party after an Event of Default occurs and is continuing or in excess of \$250,000 for any occurrence or series of related occurrences shall be paid to the Lender for itself and on behalf of the secured parties under the Security Agreement and, if received by such Credit Party, shall be held in trust for the secured parties under the Security Agreement and immediately paid over to the Lender unless otherwise directed in writing by the Lender.”

(l) *Conversion.* Section 2.09. Conversion is hereby amended by deleting the current Section 2.09 and substituting in its place the following:

“At any time following the Fourth Amendment Effective Date, after the receipt of the consent of the Parent’s shareholders pursuant to Nasdaq Listing Rule 5635(d), the Lender shall have the right, but not the obligation, to convert all or any portion of the outstanding principal amount of the Loan, plus any accrued and unpaid interest on such amount that is outstanding on the date of such conversion, into Common Stock of the Parent on the terms and conditions set forth in the Note. Following any such conversion and notwithstanding anything to the contrary in any Loan Document, the outstanding principal amount of the Loan shall automatically be reduced by an amount equal to the portion of the principal amount of the Loan subject to such conversion.”

(m) *Interest Rate and Payment Dates.* Section 3.01(a). Prior to Maturity is hereby amended by deleting the current Section 3.01(a) and substituting in its place the following:

“(a) Prior to Maturity. Except as otherwise provided in Section 3.01(d), prior to maturity the outstanding principal balance of the Loan shall bear interest at the rate of 9.0% per annum calculated on a monthly basis (the “**Monthly Interest**”). Except as provided in Section 3.01(b) below, interest only on the Loan, at the foregoing rate, shall be payable in arrears on the last Business Day of each month. All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day).”

(n) *Interest Rate and Payment Dates.* Section 3.01(b). Default Rate is hereby renumbered Section 3.01(d) and a new Section 3.01(b) and a new Section 3.01(c) shall be inserted as follows:

“(b) Deferred Interest. Notwithstanding anything to the contrary contained in Section 3.01(a) above, from the Fourth Amendment Effective Date until the Interest Deferment Date, the Monthly Interest shall continue to accrue, shall be compounded monthly, and shall be due and payable on the Interest Deferment Date. At all times after the Interest Deferment Date, interest shall continue to be paid as provided in Section 3.01(a) above, subject to Section 3.01(c) below.

(c) Payment in Stock. At the Company’s option, exercisable in writing by notice to the Company at any time (i) not more than thirty (30) days but not less than five (5) Business Days prior to the Interest Deferment Date, at Company’s sole discretion, any portion of the Monthly Interest that is payable on the Interest Deferment Date, or (ii) after the Interest Deferment Date, not more than twenty-one (21) days but not less than five (5) Business Days, prior to the date upon which each payment of Monthly Interest is due, at Company’s sole discretion, all or any portion of the Monthly Interest that is payable on such payment date, shall be paid by way of issuance of Common Stock of the Parent on the terms and conditions set forth in the Note, including without limitation, any requirement that any portion of the Monthly Interest be payable in cash until the Parent receives Shareholder Approval.”

(o) *Notices.* Section 9.02. is hereby amended by deleting the current name and address of the Lender and substituting in its place the following:

“B3D, LLC
9935D Rea Road
#317
Charlotte NC 28277
Attn: Brian Daly, Manager
Telephone: (914) 482-3992
Email: Daly2020@outlook.com”

5. **[INTENTIONALLY OMITTED].**

6. **Amendment Effective Date.** This Amendment shall become effective on the date (the “Fourth Amendment Effective Date”) that Lender shall have received each of the following, in form and substance satisfactory to the Lender:

- (a) Copies of this Amendment executed by Borrower and the Lender;
- (b) One (1) original Replacement Note executed by Borrower;

(c) One (1) original Registration Rights Agreement in the form annexed hereto as "**Exhibit B**" (the "Registration Rights Agreement") executed by Parent; and

(d) Copies of the ratification of guaranty and security interest, executed by the Parent and each of the Subsidiary Guarantors in substantially the form annexed hereto as "**Exhibit C**."

7. **No Defenses.** The Borrower acknowledges that its obligations to the Lender pursuant to the Credit Agreement, as amended herein, including but not limited to (a) its obligation to pay the principal of the Loan, in the amount of \$7,000,000, and (b) all interest that has accrued and is unpaid immediately prior to the Fourth Amendment Effective Date in the amount of \$40,791.11 which amount shall continue to accrue and shall be paid on the Interest Deferment, and (c) and all interest accrued thereunder from and after the Fourth Amendment Effective Date, which amounts are due and owing by the Borrower to the Lender without any defenses, set-offs, recoupments, claims or counterclaims of any kind as of the date hereof. To the extent that any defenses, set-offs, recoupments, claims or counterclaims may exist as of the date hereof, the Borrower waives and releases the Lender from the same.

8. **Reaffirmation and Affirmation of Representations.** The Borrower hereby agrees with, affirms, reaffirms and acknowledges the representations and warranties contained in the Loan Documents, including but not limited to the facts set forth in the Recitals hereto relating to Borrower's consent to the assignment of the Credit Agreement, the Existing Note and all other Loan Documents (including guaranties and security documents) by Rockmore to Lender. The Borrower represents that the representations and warranties contained in the Loan Documents are true and in full force and effect and continue to be true and in full force and effect.

9. **Ratification of Unchanged Terms.** The Borrower affirms, ratifies and reaffirms all terms, covenants, conditions and agreements contained in the Loan Documents, in each case as amended and modified by this Fourth Amendment. All terms and conditions of the Credit Agreement and Loan Documents not amended or modified by this Fourth Amendment, and any and all Exhibits annexed thereto and all other writings submitted by the Borrowers to the Lender pursuant thereto, and all Liens granted thereunder, shall remain unchanged and in full force and effect, in each case except as amended by this Fourth Amendment.

10. **No Waiver.** This Fourth Amendment shall not constitute a waiver or modification of any of the Lender's rights and remedies or of any of the terms, conditions, warranties, representations, or covenants contained in the Loan Documents, except as specifically set forth hereinabove, and the Lender hereby reserves all of its rights and remedies pursuant to the Loan Documents and applicable law.

11. **Severability.** Any provision of this Fourth Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confirmed to the provision so held to be invalid or unenforceable.

12. **Binding Effect; No Third Party Beneficiaries.** This Fourth Amendment shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns. This Fourth Amendment is solely for the benefit of each of the parties hereto and their respective successors and assigns, and no other Person shall have any right, benefit, priority or interest under, or because of the existence of, this Fourth Amendment.

13. **Governing Law.** This Fourth Amendment is governed by and is to be construed and enforced in accordance with the laws of the State of New York (without regard to the conflicts of law rules of New York). The parties to this Agreement hereby consent to the exclusive jurisdiction of the federal and state courts of the State of New York in the event of any dispute arising under or in connection with this Agreement.

14. **Further Assurances.** The parties hereto shall execute and deliver such additional documents and take such additional action as may be necessary or desirable to effectuate the provisions and purposes of this Fourth Amendment.

15. **Authorization.** The Borrower represents and warrants to the Lender that this Fourth Amendment has been approved by proper corporate authorization and resolution of the Borrower.

16. **Counterparts.** This Fourth Amendment may be executed in several counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute one agreement. Any signature delivered by a party by facsimile transmission or by email in "PDF" or similar format shall be deemed to be an original signature hereto.

[Signature Page Follows]

* * *

IN WITNESS WHEREOF, each of the undersigned has executed and delivered this Fourth Amendment to Credit Agreement as of the date first above written.

XPRESSPA HOLDINGS, LLC

By: _____
Name: Douglas Satzman
Title: Chief Executive Officer

B3D, LLC

By: _____
Name: Brian Daly
Title: Manager

PARENT’S ACKNOWLEDGMENT AND AGREEMENT

XpresSpa Group, Inc., a Delaware corporation (the “Parent”) by signing below, represents and warrants to Lender, acknowledges and agrees: (i) Parent is the sole member of Borrower, has a direct financial benefit from the Loan, is the Parent Guarantor of all of the obligations under the foregoing Fourth Amendment (the “Fourth Amendment”), the Credit Agreement as amended by the Fourth Amendment, the Loan and the Replacement Note, which obligations are secured by the pledge of its equity in the Borrower, and (ii) Parent hereby assumes and agrees to be bound by all obligations and provisions contained in the Credit Agreement and the Replacement Note which pertain to Parent, including but not limited to Parent’s obligations under the Registration Rights Agreement and Parent’s obligation to issue to Lender Common Shares of Parent’s stock upon conversion of any portion of the Replacement Note and upon exercise of Lender’s rights to be paid interest by way of issuance of Common Stock of the Parent accordance with Section 3.01(b) of the Credit Agreement (and Section 2 of the Replacement Note).

In addition, Parent agrees that for each instance where shareholder approval is provided for in connection with the issuance to Lender of any shares of Common Stock pursuant to any of the Fourth Amendment, the Replacement Note, and/or the Registration Rights Agreement, the Parent shall use commercially reasonable efforts to obtain within one hundred (120) days after the Fourth Amendment Effective Date, the consent of its shareholders pursuant to Nasdaq Listing Rule 5635(d) (the “Shareholder Approval”) for the issuance of all the shares of its Common Stock that could be issued pursuant to Sections 2 and 7 of the Replacement Note. If, despite the Parent’s commercially reasonable efforts as provided herein, the Shareholder Approval is not initially obtained, the Parent shall cause an additional shareholder meeting to be held every three (3) months thereafter until such Shareholder Approval is obtained. Notwithstanding anything to the contrary contained in this Acknowledgment and Agreement, the Parent shall have no obligation to solicit or obtain the Shareholder Approval if Nasdaq Listing Rule 5635(d) no longer applies to the Parent or would not prohibit the Lender from acquiring shares of Common Stock pursuant to the Replacement Note without receipt of such Shareholder Approval.

XPRESSPA GROUP, INC.

By:

Name: Douglas Satzman

Title: Chief Executive Officer

EXHIBIT A
REPLACEMENT NOTE

Attached.

EXHIBIT B
REGISTRATION AGREEMENT

Attached.

EXHIBIT C
FORM OF RATIFICATION

[Attached]

REGISTRATION RIGHTS AGREEMENT

REGISTRATION RIGHTS AGREEMENT (this "**Agreement**"), dated as of July 8, 2019, by and among XpresSpa Group, Inc., a Delaware corporation, with headquarters located at 780 Third Avenue, 12th Floor, New York, NY 10017 (the "**Company**"), and the investor listed on the Schedule of Investors attached hereto (the "**Lender**").

WHEREAS:

A. In connection with the loan (the "**Loan**") extended to XpresSpa Holdings, LLC ("**Holdings**"), a Delaware limited liability company and wholly-owned subsidiary of the Company, pursuant to the Credit Agreement dated April 22, 2015, as amended by the First Amendment to Credit Agreement and Waiver dated as of August 8, 2016, and as amended by a Second Amendment to Credit Agreement dated as of May 10, 2017, and as amended by a Third Amendment to Credit Agreement dated as of May 11, 2018, and as amended by a Fourth Amendment to Credit Agreement dated and as of the date hereof between Holdings and the Lender (as further amended, restated, amended and restated, extended, renewed, replaced, supplemented or otherwise modified from time to time, collectively, the "**Credit Agreement**") and that certain Second Amended and Restated Convertible Note in the principal amount of \$7,000,000 made by Holdings to the Lender as of the date hereof (as further amended, restated, amended and restated, extended, renewed, replaced, supplemented or otherwise modified from time to time, collectively, the "**Note**"), which Loan and Note are guaranteed by the Company, the Company has agreed, upon the terms and subject to the conditions of the Credit Agreement and the Note, to issue to the Lender, shares of the Company's common stock, par value \$0.01 per share (the "**Common Stock**") upon exercise of (A) Company's right to pay all or a portion of the accrued interest on the Note due on the earlier of (y) ninety (90) days after the Closing Date or (z) the date that the Shareholder Approval has been given, and, thereafter, (B) Company's right to pay all or a portion of the monthly interest on the Note, and (C) Lender's right to convert up the entire outstanding principal balance of the Note plus accrued interest (the shares of Common Stock issuable upon conversion of the Notes, collectively, the "**Common Shares**").

B. In accordance with the terms of the Credit Agreement and the Note (collectively, the "**Securities Acquisition Agreements**"), the Company has agreed to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder, or any similar successor statute (collectively, the "**1933 Act**"), and applicable state securities laws.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Lender hereby agree as follows:

1. Definitions.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Securities Acquisition Agreements. As used in this Agreement, the following terms shall have the following meanings:

(a) "**Additional Effective Date**" means the date the Additional Registration Statement is declared effective by the SEC.

(b) "**Additional Effectiveness Deadline**" means the date which is the earlier of (x) (i) in the event that the Additional Registration Statement is not subject to a full review by the SEC, twenty (20) calendar days after the earlier of the Additional Filing Date and the Additional Filing Deadline or (ii) in the event that the Additional Registration Statement is subject to a full review by the SEC, seventy-five (75) calendar days after the earlier of the Additional Filing Date and the Additional Filing Deadline and (y) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Additional Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Additional Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Additional Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(c) **"Additional Filing Date"** means the date on which the Additional Registration Statement is filed with the SEC.

(d) **"Additional Filing Deadline"** means if Cutback Shares are required to be included in any Additional Registration Statement, thirty (30) calendar days after the date an Investor gives notice to the Company that substantially all of such Investor's Registrable Securities registered under the immediately preceding Registration Statement are sold.

(e) **"Additional Registrable Securities"** means, (i) any Cutback Shares not previously included on a Registration Statement and (ii) any capital stock of the Company issued or issuable with respect to the Common Shares, or the Cutback Shares, as applicable, as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise without regard to any limitations on exercise of the warrants.

(f) **"Additional Registration Statement"** means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of any Additional Registrable Securities.

(g) **"Additional Required Registration Amount"** means (I) any Cutback Shares not previously included on a Registration Statement, all subject to adjustment as provided in Section 2(f) or (II) such other amount as may be permitted by the staff of the SEC pursuant to Rule 415.

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

(i) **"Closing Date"** shall mean the Fourth Amendment Effective Date as defined in the Securities Acquisition Agreements.

(j) **"Cutback Shares"** means any of the Initial Required Registration Amount or the Additional Required Registration Amount (without regard to clause (II) in the definition thereof) of Registrable Securities not included in all Registration Statements contemplated hereunder as a result of a limitation on the maximum number of shares of Common Stock of the Company permitted to be registered by the staff of the SEC pursuant to Rule 415. For the purpose of determining the Cutback Shares, in order to determine any applicable Required Registration Amount, unless an Investor gives written notice to the Company to the contrary with respect to the allocation of its Cutback Shares, first the Warrant Shares shall be excluded on a pro rata basis among the Investors until all of the Warrant Shares have been excluded, and second the Common Shares shall be excluded on a pro rata basis among the Investors until all of the Common Shares have been excluded.

(k) **"Effective Date"** means the Initial Effective Date and the Additional Effective Date, as applicable.

(l) **"Effectiveness Deadline"** means the Initial Effectiveness Deadline and the Additional Effectiveness Deadline, as applicable.

(m) **"Eligible Market"** means the Principal Market, The New York Stock Exchange, Inc., the NYSE American, The Nasdaq Capital Market, The Nasdaq Global Select Market, The Nasdaq Global Market, the OTC Bulletin Board, the OTCQB or the OTCQX (or any successor to any of the foregoing).

(n) **"Filing Deadline"** means the Initial Filing Deadline and the Additional Filing Deadline, as applicable.

(o) **"Initial Effective Date"** means the date that the Initial Registration Statement has been declared effective by the SEC.

(p) **"Initial Effectiveness Deadline"** means the date which is the earlier of (x) (i) in the event that the Initial Registration Statement is not subject to a full review by the SEC, sixty (60) calendar days after the Initial Filing Deadline, or (ii) in the event that the Initial Registration Statement is subject to a full review by the SEC, one hundred (100) calendar days after the Initial Filing Deadline, and (y) the fifth (5th) Business Day after the date the Company is notified (orally or in writing, whichever is earlier) by the SEC that such Initial Registration Statement will not be reviewed or will not be subject to further review; provided, however, that if the Initial Effectiveness Deadline falls on a Saturday, Sunday or other day that the SEC is closed for business, the Initial Effectiveness Deadline shall be extended to the next Business Day on which the SEC is open for business.

(q) **"Initial Filing Date"** means the date on which the Initial Registration Statement is filed with the SEC.

(r) **"Initial Filing Deadline"** means forty-five (45) days after the date of this Agreement.

(s) **"Initial Registrable Securities"** means (i) 125% of the Common Shares issued or issuable upon conversion of the Notes issued pursuant to the terms of the Securities Acquisition Agreements, and (ii) any capital stock of the Company issued or issuable with respect to the Common Shares or the Notes as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise without regard to any limitations on conversion of the Notes.

(t) **"Initial Registration Statement"** means a registration statement or registration statements of the Company filed under the 1933 Act covering the resale of the Initial Registrable Securities.

(u) **"Initial Required Registration Amount"** means (I) the number of Common Shares or (II) such other amount as may be permitted by the staff of the SEC pursuant to Rule 415.

(v) **"Investor"** means the Lender or any transferee or assignee thereof to whom Lender assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9 and any transferee or assignee thereof to whom a transferee or assignee assigns its rights under this Agreement and who agrees to become bound by the provisions of this Agreement in accordance with Section 9.

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

(x) **"Principal Market"** means The Nasdaq Capital Market.

(y) **"register," "registered," and "registration"** refer to a registration effected by preparing and filing one or more Registration Statements (as defined below) in compliance with the 1933 Act and pursuant to Rule 415, and the declaration or ordering of effectiveness of such Registration Statement(s) by the SEC.

(z) **"Registrable Securities"** means the Initial Registrable Securities and the Additional Registrable Securities.

(aa) **"Registration Statement"** means the Initial Registration Statement and the Additional Registration Statement, as applicable.

(bb) **"Required Holders"** means holders of at least a majority of the Registrable Securities.

(cc) **"Required Registration Amount"** means either the Initial Required Registration Amount or the Additional Required Registration Amount, as applicable.

(dd) **"Rule 415"** means Rule 415 promulgated under the 1933 Act or any successor rule providing for offering securities on a continuous or delayed basis.

(ee) **"SEC"** means the United States Securities and Exchange Commission.

(ff) **"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 Common Stock is then traded; provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for 4.5 or more hours or any day that the Common Stock is 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).

2. Registration.

(a) Initial Mandatory Registration. Promptly following the Closing Date, the Company shall prepare, and, as soon as practicable but in no event later than the Initial Filing Deadline, file with the SEC the Initial Registration Statement on Form S-3 covering the resale of all of the Initial Registrable Securities. In the event that Form S-3 is unavailable for such a registration, the Company shall use Form S-1 or such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(e). The Initial Registration Statement prepared pursuant hereto shall register for resale at least the number of shares of Common Stock equal to the Initial Required Registration Amount determined as of the date the Initial Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(f). The Initial Registration Statement shall contain (except if otherwise directed by the Required Holders) the "Plan of Distribution" and "Selling Shareholders" sections in substantially the form attached hereto as Exhibit B, with such modifications as may be required by law. The Company shall use its commercially reasonable efforts to have the Initial Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Initial Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Initial Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Initial Registration Statement. The Company represents and warrants that the exclusion of Cutback Shares will not apply with respect to at least 384,965 Initial Registrable Securities and that not fewer than 384,965 of Initial Registrable Securities must be included for registration in the Initial Registration Statement.

(b) Additional Mandatory Registrations. The Company shall prepare, and, as soon as practicable but in no event later than the Additional Filing Deadline, file with the SEC an Additional Registration Statement on Form S-3 covering the resale of all of the Additional Registrable Securities not previously registered on an Additional Registration Statement hereunder. To the extent the staff of the SEC does not permit the Additional Required Registration Amount to be registered on an Additional Registration Statement, the Company shall file Additional Registration Statements successively trying to register on each such Additional Registration Statement the maximum number of remaining Additional Registrable Securities until the Additional Required Registration Amount has been registered with the SEC; provided that after two rejections by the SEC of Additional Registration Statements, the Company shall not be required to file Additional Registration Statements more frequently than once per sixty day period commencing subsequent to the second rejection. In the event that Form S-3 is unavailable for such a registration, the Company shall use Form S-1 or such other form as is available for such a registration on another appropriate form reasonably acceptable to the Required Holders, subject to the provisions of Section 2(e). Each Additional Registration Statement prepared pursuant hereto shall register for resale at least that number of shares of Common Stock equal to the Additional Required Registration Amount determined as of the date such Additional Registration Statement is initially filed with the SEC, subject to adjustment as provided in Section 2(f). Each Additional Registration Statement shall contain (except if otherwise directed by the Required Holders) the "Plan of Distribution" and "Selling Shareholders" sections in substantially the form attached hereto as Exhibit B, with such modifications as may be required by law. The Company shall use its commercially reasonable efforts to have each Additional Registration Statement declared effective by the SEC as soon as practicable, but in no event later than the Additional Effectiveness Deadline. By 9:30 a.m. New York time on the Business Day following the Additional Effective Date, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Additional Registration Statement.

(c) Allocation of Registrable Securities. The initial number of Registrable Securities included in any Registration Statement and any increase or decrease in the number of Registrable Securities included therein shall be allocated pro rata among the Investors based on the number of Registrable Securities held by each Investor at the time the Registration Statement covering such initial number of Registrable Securities or increase or decrease thereof is declared effective by the SEC. In the event that an Investor sells or otherwise transfers any of such Investor's Registrable Securities, each transferee shall be allocated a pro rata portion of the then remaining number of Registrable Securities included in such Registration Statement for such transferor. Any shares of Common Stock included in a Registration Statement and which remain allocated to any Person which ceases to hold any Registrable Securities covered by such Registration Statement shall be allocated to the remaining Investors, pro rata based on the number of Registrable Securities then held by such Investors which are covered by such Registration Statement. In no event shall the Company include any securities other than Registrable Securities on any Registration Statement without the prior written consent of the Required Holders, other than to register securities issued or issuable in connection with (i) that certain Securities Purchase Agreement, dated May 15, 2018, as subsequently amended, by and between the Company and each purchaser identified on the signature page thereto (the "**Palladium SPA**"), (ii) that certain Securities Purchase Agreement, dated July 8, 2019, by and between the Company and Calm.com, Inc. (the "**Calm SPA**") and (iii) that certain reload offer letter, dated as of July 8, 2019 (the "**Reload Offer Letter**").

(d) Legal Counsel. Subject to Section 5 hereof, the Required Holders shall have the right, at their own expense, to select one legal counsel to review and oversee any registration pursuant to this Section 2 ("**Legal Counsel**"), which shall be Sills Cummis & Gross, P.C., or such other counsel as thereafter designated by the Required Holders. The Company and Legal Counsel shall reasonably cooperate with each other in performing the Company's obligations under this Agreement.

(e) Ineligibility for Form S-3. In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on Form S-1 or another appropriate form reasonably acceptable to the Required Holders and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as any such Registration Statement on Form S-3 filed by the Company covering the Registrable Securities has been declared effective by the SEC.

(f) Sufficient Number of Shares Registered. In the event the number of shares available under a Registration Statement filed pursuant to Section 2(a) or Section 2(b) is insufficient to cover the Required Registration Amount of Registrable Securities required to be covered by such Registration Statement or an Investor's allocated portion of the Registrable Securities pursuant to Section 2(c), the Company shall amend the applicable Registration Statement, or file a new Registration Statement (on the short form available therefor, if applicable), or both, so as to cover at least the Required Registration Amount as of the Trading Day immediately preceding the date of the filing of such amendment or new Registration Statement, in each case, as soon as practicable, but in any event not later than fifteen (15) calendar days after the necessity therefor arises. The Company shall use its commercially reasonable efforts to cause such amendment and/or new Registration Statement to become effective as soon as practicable following the filing thereof. For purposes of the foregoing provision, the number of shares available under a Registration Statement shall be deemed "insufficient to cover all of the Registrable Securities" if at any time the number of shares of Common Stock available for resale under the Registration Statement is less than the Required Registration Amount.

(g) Effect of Failure to File and Obtain and Maintain Effectiveness of Registration Statement. If (i) the Initial Registration Statement when declared effective fails to register the Initial Required Registration Amount of Initial Registrable Securities (a "**Registration Failure**"), (ii) a Registration Statement covering all of the Registrable Securities required to be covered thereby and required to be filed by the Company pursuant to this Agreement is (A) not filed with the SEC on or before the applicable Filing Deadline (a "**Filing Failure**") or (B) not declared effective by the SEC on or before the applicable Effectiveness Deadline, (an "**Effectiveness Failure**") or (iii) on any day after the applicable Effective Date, sales of all of the Registrable Securities required to be included on such Registration Statement cannot be made (other than during an Allowable Grace Period (as defined in Section 3(r))) pursuant to such Registration Statement or otherwise (including, without limitation, because of the suspension of trading or any other limitation imposed by an Eligible Market, a failure to keep such Registration Statement effective, a failure to disclose such information as is necessary for sales to be made pursuant to such Registration Statement, a failure to register a sufficient number of shares of Common Stock or a failure to maintain the listing of the Common Stock) (a "**Maintenance Failure**" and collectively with a Registration Failure, a Filing Failure, and an Effectiveness Failure, the "**Failures**" and each a "**Failure**"), then, as partial relief for the damages to any holder by reason of a Failure (which remedy shall not be exclusive of any other remedies available at law or in equity, including, without limitation, specific performance or the additional obligation of the Company to register any Cutback Shares), the Company shall promptly give Holder and Legal Counsel written notice of any such Failure and shall pay to each Holder of Registrable Securities relating to such Registration Statement an amount in cash equal to one percent (1.0%) of the aggregate amount of \$7,000,000, on each of the following dates: (i) the day of a Registration Failure, (ii) the day of a Filing Failure; (iii) the day of an Effectiveness Failure; (iv) the initial day of a Maintenance Failure; (v) on the thirtieth day after the date of a Registration Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Registration Failure is cured; (vi) on the thirtieth day after the date of a Filing Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Filing Failure is cured; (vii) on the thirtieth day after the date of an Effectiveness Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Effectiveness Failure is cured; and (viii) on the thirtieth day after the initial date of a Maintenance Failure and every thirtieth day thereafter (pro rated for periods totaling less than thirty days) until such Maintenance Failure is cured; provided however, in the event that there shall be more than one Failure occurring simultaneously, the 1.0% shall apply in the aggregate (e.g., during any single or multiple Failure, 1% shall be due, however 1% shall not be due "per Failure" if the Failures are simultaneous and for so long as such Failures are simultaneous). The payments to which a holder shall be entitled pursuant to this Section 2(g) are referred to herein as "**Registration Delay Payments.**" Registration Delay Payments shall be paid on the earlier of (I) the dates set forth above and (II) the third Business Day after the event or failure giving rise to the Registration Delay Payments is cured. In the event the Company fails to make Registration Delay Payments in a timely manner, such Registration Delay Payments shall bear interest at the rate of one percent (1%) per month (prorated for partial months) until paid in full. Notwithstanding anything to the contrary contained herein, Registration Delay Payments shall (i) not, in the aggregate, exceed seven percent (7%) of \$7,000,000 (ii) cease to accrue when all of the Registrable Securities may be sold pursuant to Rule 144 without any restrictions or limitations, and (iii) cease to accrue upon the termination of the Registration Period (as defined below).

(h) Limitation on Other Registration Statements. Other than to register securities issued or issuable in connection with the Palladium SPA, Calm SPA and the Reload Offer Letter, the Company shall not file another registration statement under the 1933 Act prior to the earlier of (i) ninety (90) days after the date that the Initial Registration Statement is declared effective by the SEC and (ii) the end of the Registration Period (as defined in Section 3(a)) nor include in the Initial Registration Statement or Additional Registration any securities except the Registrable Securities and Additional Registrable Securities; provided that, this Section 2(h) shall not prevent the Company from (a) filing a registration statement on Form S-4 or Form S-8 with the SEC at any time beginning thirty (30) calendar days after the initial filing of the Initial Registration Statement with the SEC or (b) filing a universal shelf registration statement on Form S-3.

3. Related Obligations.

At such time as the Company is obligated to file a Registration Statement with the SEC pursuant to Section 2(a), 2(b), 2(e) or 2(f), the Company will use its commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with the intended method of disposition thereof and, pursuant thereto, the Company shall have the following obligations:

(a) The Company shall promptly prepare and file with the SEC a Registration Statement with respect to the Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement relating to the Registrable Securities to become effective as soon as practicable after such filing (but in no event later than the Effectiveness Deadline). The Company shall keep each Registration Statement effective pursuant to Rule 415 at all times until the earlier of (i) the date that is two (2) years and six (6) months after the Closing Date or (ii) the date on which the Investors shall have sold all of the Registrable Securities required to be covered by such Registration Statement (the "**Registration Period**"). The Company shall ensure that each Registration Statement (including any amendments or supplements thereto and prospectuses contained therein) shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein (in the case of prospectuses, in the light of the circumstances in which they were made) not misleading. The term "commercially reasonable efforts" shall mean, among other things, that the Company shall submit to the SEC, within two (2) Business Days after the later of the date that (i) the Company learns that no review of a particular Registration Statement will be made by the staff of the SEC or that the staff has no further comments on a particular Registration Statement, as the case may be, and (ii) the approval of Legal Counsel pursuant to Section 3(c) (which approval is promptly sought), a request for acceleration of effectiveness of such Registration Statement to a time and date not later than two (2) Business Days after the submission of such request. The Company shall respond in writing to comments made by the SEC in respect of a Registration Statement as soon as practicable, but in no event later than fifteen (15) calendar days after the receipt of comments by or notice from the SEC that an amendment is required in order for a Registration Statement to be declared effective.

(b) The Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to a Registration Statement and the prospectus used in connection with such Registration Statement, which prospectus is to be filed pursuant to Rule 424 promulgated under the 1933 Act, as may be necessary to keep such Registration Statement effective at all times during the Registration Period, and, during such period, comply with the provisions of the 1933 Act with respect to the disposition of all Registrable Securities of the Company covered by such Registration Statement until such time as all of such Registrable Securities shall have been disposed of in accordance with the intended methods of disposition by the seller or sellers thereof as set forth in such Registration Statement. In the case of amendments and supplements to a Registration Statement which are required to be filed pursuant to this Agreement (including pursuant to this Section 3(b)) by reason of the Company filing a report on Form 10-K, Form 10-Q, Form 8-K or any analogous report under the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), the Company shall have incorporated such report by reference into such Registration Statement, if applicable, or shall file such amendments or supplements with the SEC on the same day on which the 1934 Act report is filed which created the requirement for the Company to amend or supplement such Registration Statement.

(c) The Company shall (A) permit Legal Counsel to review and comment upon (i) a Registration Statement at least three (3) Business Days prior to its filing with the SEC and (ii) all amendments and supplements to all Registration Statements (except for those filed by reason of the Company filing Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and any similar or successor reports) within a reasonable number of days prior to their filing with the SEC, (B) permit each Investor to review and comment on the "Plan of Distribution" and "Selling Shareholders" sections of the Registration Statement and all amendments and supplements to the Registration Statement to the extent any changes are made to those sections, and (C) not file any Registration Statement or amendment or supplement thereto in a form to which Legal Counsel reasonably objects; provided however, that if the delay in filing the Registration Statement is due to Legal Counsel's or an Investor's unreasonable objections (and unreasonable refusal to allow the Company to file the Registration Statement) then in such event, no Registration Failure (or similar event that triggers a Registration Delay Payment) shall be deemed to have occurred with such delay arising from Legal Counsel's unreasonable objections, or solely with respect to an Investor, arising from such Investor's unreasonable objections. The Company shall not submit a request for acceleration of the effectiveness of a Registration Statement or any amendment or supplement thereto without the prior approval of Legal Counsel, which consent shall not be unreasonably withheld; provided however, that if the delay in filing the effectiveness of the Registration Statement is due to Legal Counsel's unreasonable objections (and unreasonable refusal to allow the Registration Statement to become effective) then in such event, no Effectiveness Failure (or similar event that triggers a Registration Delay Payment) shall be deemed to have occurred. The Company shall furnish to Legal Counsel, without charge, copies of any correspondence from the SEC or the staff of the SEC to the Company or its representatives relating to any Registration Statement. The Company shall reasonably cooperate with Legal Counsel in performing the Company's obligations pursuant to this Section 3.

(d) The Company shall use its commercially reasonable efforts to (i) register and qualify, unless an exemption from registration and qualification applies, the resale by Investors of the Registrable Securities covered by a Registration Statement under such other securities or "blue sky" laws of all applicable jurisdictions in the United States, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof during the Registration Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications in effect at all times during the Registration Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale in such jurisdictions; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (x) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(d), (y) subject itself to general taxation in any such jurisdiction, or (z) file a general consent to service of process in any such jurisdiction. The Company shall promptly notify Legal Counsel of the receipt by the Company of any notification with respect to the suspension of the registration or qualification of any of the Registrable Securities for sale under the securities or "blue sky" laws of any jurisdiction in the United States or its receipt of actual notice of the initiation or threatening of any proceeding for such purpose.

(e) The Company shall notify Legal Counsel in writing of the happening of any event, as promptly as practicable but not later than the first Business Day after becoming aware of such event, (i) as a result of which the prospectus included in a Registration Statement, as then in effect, includes an untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that in no event shall such notice contain any material, nonpublic information), or (ii) that results in the lack of effectiveness of any Registration Statement, and, subject to Section 3(q), promptly prepare a supplement or amendment to such Registration Statement to correct such untrue statement or omission, or lack of effectiveness of any Registration Statement. The Company shall also promptly notify Legal Counsel in writing (i) when a prospectus or any prospectus supplement or post-effective amendment has been filed, and when a Registration Statement or any post-effective amendment has become effective (notification of such effectiveness shall be delivered to Legal Counsel by email on the same day of such effectiveness and by overnight mail), (ii) of any request by the SEC for amendments or supplements to a Registration Statement or related prospectus or related information, and (iii) of the Company's reasonable determination that a post-effective amendment to a Registration Statement would be appropriate. By 9:30 a.m. New York City time on the day following the date any post-effective amendment has become effective, the Company shall file with the SEC in accordance with Rule 424 under the 1933 Act the final prospectus to be used in connection with sales pursuant to such Registration Statement.

(f) The Company shall use its commercially reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of a Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension at the earliest possible moment and to notify Legal Counsel of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(g) If any Investor is required by the SEC to be described in the Registration Statement as an underwriter or the Company and an Investor agree that it should be identified as an underwriter of Registrable Securities in the Registration Statement and the Registration Statement is so modified, the Company shall furnish to such Investor, on the date of the effectiveness of the Registration Statement and thereafter from time to time on such dates as an Investor may reasonably request (i) a letter, dated such date, from the Company's independent certified public accountants in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the Investors, and (ii) an opinion, dated as of such date, of counsel representing the Company for purposes of such Registration Statement, in form, scope and substance as is customarily given in an underwritten public offering, addressed to the Investors.

(h) If any Investor is required under applicable securities laws to be described in the Registration Statement as an underwriter or the Company and an Investor agrees that it could reasonably be deemed to be an underwriter of Registrable Securities, the Company shall make available for inspection by (i) such Investor, (ii) Legal Counsel and (iii) one firm of accountants or other agents retained by the Investors (collectively, the "Inspectors"), all pertinent financial and other records, and pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably deemed necessary by each Inspector, and cause the Company's officers, directors and employees to supply all information which any Inspector may reasonably request; provided, however, that each Inspector shall agree to hold in strict confidence and shall not make any disclosure (except to an Investor who agrees to keep such Records confidential and not to trade on such information) or use of any Record or other information which the Company determines in good faith to be confidential, and of which determination the Inspectors are so notified, unless (a) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in any Registration Statement or is otherwise required under the 1933 Act, (b) the release of such Records is ordered pursuant to a final, non-appealable subpoena or order from a court or government body of competent jurisdiction, or (c) the information in such Records has been made generally available to the public other than by disclosure in violation of this Agreement. Each Investor agrees that it shall, upon learning that disclosure of such Records is sought in or by a court or governmental body of competent jurisdiction or through other means, to the extent legally permitted and practicable under the circumstances, give prompt notice to the Company and allow the Company, at its expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, the Records deemed confidential. Nothing herein (or in any other confidentiality agreement between the Company and any Investor) shall be deemed to limit the Investors' ability to sell Registrable Securities in a manner which is otherwise consistent with applicable laws and regulations.

(i) The Company shall hold in confidence and not make any disclosure of information concerning an Investor provided to the Company unless (i) disclosure of such information is necessary to comply with federal or state securities laws, (ii) the disclosure of such information is necessary to avoid or correct a misstatement or omission in any Registration Statement, (iii) the release of such information is ordered pursuant to a subpoena or other final, non-appealable order from a court or governmental body of competent jurisdiction, or (iv) such information has been made generally available to the public other than by disclosure in violation of this Agreement or any other agreement. The Company agrees that it shall, upon learning that disclosure of such information concerning an Investor is sought in or by a court or governmental body of competent jurisdiction or through other means, give prompt written notice to such Investor and allow such Investor a reasonable period of time, at the Investor's expense, to undertake appropriate action to prevent disclosure of, or to obtain a protective order for, such information.

(j) The Company shall use its commercially reasonable efforts either to (i) cause all of the Registrable Securities covered by a Registration Statement to be listed on each securities exchange on which securities of the same class or series issued by the Company are then listed, if any, if the listing of such Registrable Securities is then permitted under the rules of such exchange or (ii) secure the inclusion for quotation of all of the Registrable Securities on the Principal Market or (iii) if, despite the Company's commercially reasonable efforts, the Company is unsuccessful in satisfying the preceding clauses (i) and (ii), to secure the inclusion for quotation on another Eligible Market for such Registrable Securities and, without limiting the generality of the foregoing, to use its commercially reasonable efforts to arrange for at least two market makers to register with the Financial Industry Regulatory Authority, Inc. ("FINRA") as such with respect to such Registrable Securities. The Company shall pay all fees and expenses in connection with satisfying its obligation under this Section 3(j).

(k) The Company shall cooperate with the Investors who hold Registrable Securities being offered and, to the extent applicable, facilitate the timely preparation and delivery of certificates (not bearing any restrictive legend) representing the Registrable Securities to be offered pursuant to a Registration Statement and enable such certificates to be in such denominations or amounts, as the case may be, as the Investors may reasonably request and registered in such names as the Investors may request.

(l) If reasonably requested by an Investor, the Company shall as soon as practicable (i) incorporate in a prospectus supplement or post-effective amendment such information as an Investor reasonably requests to be included therein relating to the sale and distribution of Registrable Securities, including, without limitation, information with respect to the number of Registrable Securities being offered or sold, the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering; (ii) make all required filings of such prospectus supplement or post-effective amendment after being notified of the matters to be incorporated in such prospectus supplement or post-effective amendment; and (iii) supplement or make amendments to any Registration Statement if reasonably requested by an Investor holding any Registrable Securities.

(m) The Company shall use its commercially reasonable efforts to cause the Registrable Securities covered by a Registration Statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to consummate the disposition of such Registrable Securities.

(n) Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of preventing the Company from performing its obligations hereunder.

(o) The Company shall otherwise use its commercially reasonable efforts to comply in all material respects with all applicable rules and regulations of the SEC in connection with any registration hereunder.

(p) Within two (2) Business Days after a Registration Statement which covers Registrable Securities is ordered effective by the SEC, the Company shall deliver, and shall cause legal counsel for the Company to deliver, to the transfer agent for such Registrable Securities (with copies to the Investors whose Registrable Securities are included in such Registration Statement) confirmation that such Registration Statement has been declared effective by the SEC in the form attached hereto as Exhibit A.

(q) Notwithstanding anything to the contrary herein, at any time after the Effective Date, the Company may delay the disclosure of material, non-public information concerning the Company the disclosure of which at the time is not, in the good faith opinion of the Board of Directors of the Company and its counsel, in the best interest of the Company and, in the opinion of counsel to the Company, otherwise required (a "**Grace Period**"); provided, that the Company shall promptly (i) notify the Investors in writing of the existence of material, non-public information giving rise to a Grace Period (provided that in each notice the Company will not disclose the content of such material, non-public information to the Investors) and the date on which the Grace Period will begin, and (ii) notify the Investors in writing of the date on which the Grace Period ends; and, provided further, that no Grace Period shall exceed ten (10) consecutive Trading Days and during any three hundred sixty five (365) day period such Grace Periods shall not exceed an aggregate of twenty (20) Trading Days and the first day of any Grace Period must be at least five (5) Trading Days after the last day of any prior Grace Period (each, an "**Allowable Grace Period**"). For purposes of determining the length of a Grace Period above, the Grace Period shall begin on and include the date the Investors receive the notice referred to in clause (i) and shall end on and include the later of the date the Investors receive the notice referred to in clause (ii) and the date referred to in such notice. The provisions of Section 3(f) hereof shall not be applicable during the period of any Allowable Grace Period. Upon expiration of the Grace Period, the Company shall again be bound by the first sentence of Section 3(e) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Acquisition Agreements in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale, prior to the Investor's receipt of the notice of a Grace Period and for which the Investor has not yet settled.

(r) Except as required by applicable law, neither the Company nor any Subsidiary or affiliate thereof shall identify any Investor as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market and any Investor being deemed an underwriter by the SEC shall not relieve the Company of any obligations it has under this Agreement or any Securities Acquisition Agreements (including but not limited to all Loan Documents, as defined in the Credit Agreement); provided, however, that the foregoing shall not prohibit the Company from including the disclosure found in the "Plan of Distribution" section attached hereto as Exhibit B in the Registration Statement. If the Company is required by law or in response to a comment received by the SEC to identify any Investor as an underwriter in any public disclosure or filing with the SEC, the Principal Market or any Eligible Market, prior to so identifying any such Investor, the Company shall promptly notify each such Investor of the legal requirement and give each such Investor a reasonable opportunity to persuade the applicable regulator that said disclosure is not required. If the applicable Investors are unable to eliminate the legal requirement to be identified as an underwriter, the applicable Investor shall have five (5) Business Days, or such shorter time as required by the applicable regulator or applicable law, to consent to such disclosure or to agree to withdraw as a selling shareholder under the Registration Statement. If an Investor agrees to withdraw as a selling shareholder under the Registration Statement, the Company shall not be responsible for any such Failures with respect to any such Investor.

4. Obligations of the Investors.

(a) At least five (5) Business Days prior to the first anticipated Filing Date of a Registration Statement, the Company shall notify each Investor in writing of the information the Company requires from each such Investor if such Investor elects to have any of such Investor's Registrable Securities included in such Registration Statement. It shall be a condition precedent to the obligations of the Company to complete any registration pursuant to this Agreement with respect to the Registrable Securities of a particular Investor that such Investor shall timely furnish to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it as shall be reasonably required by the Company to effect and maintain the effectiveness of the registration of such Registrable Securities and shall timely execute such documents in connection with such registration as the Company may reasonably request.

(b) Each Investor, by such Investor's acceptance of the Registrable Securities, agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder, unless such Investor has notified the Company in writing of such Investor's election to exclude all of such Investor's Registrable Securities from such Registration Statement.

(c) Each Investor agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3(f) or the first sentence of 3(e) (a "**No Sale Notice**"), such Investor will immediately discontinue disposition of Registrable Securities pursuant to any Registration Statement(s) covering such Registrable Securities until such Investor's receipt of copies of the supplemented or amended prospectus as contemplated by Section 3(f) or the first sentence of 3(e) or receipt of notice that no supplement or amendment is required. Notwithstanding anything to the contrary, the Company shall cause its transfer agent to deliver unlegended shares of Common Stock to a transferee of an Investor in accordance with the terms of the Securities Acquisition Agreements in connection with any sale of Registrable Securities with respect to which an Investor has entered into a contract for sale prior to the Investor's receipt of a notice from the Company of the happening of any event of the kind described in Section 3(f) or the first sentence of 3(e) and for which the Investor has not yet settled.

(d) Each Investor covenants and agrees that it will comply with the prospectus delivery requirements of the 1933 Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to the Registration Statement.

5. Expenses of Registration.

All reasonable expenses, other than underwriting or broker-dealer discounts and commissions, incurred in connection with registrations, filings or qualifications pursuant to Sections 2 and 3, including, without limitation, all registration, listing and qualifications fees, printers and accounting fees, and fees and disbursements of counsel for the Company shall be paid by the Company.

6. Indemnification.

In the event any Registrable Securities are included in a Registration Statement under this Agreement:

(a) To the fullest extent permitted by law, the Company will, and hereby does, indemnify, hold harmless and defend each Investor, the directors, officers, partners, members, employees, agents, representatives of, and each Person, if any, who controls any Investor within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Person**"), against any losses, claims, damages, liabilities, judgments, fines, penalties, charges, costs, reasonable attorneys' fees, amounts paid in settlement or expenses, joint or several (collectively, "**Claims**"), incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from the foregoing by or before any court or governmental, administrative or other regulatory agency, body or the SEC, whether pending or threatened, whether or not an indemnified party is or may be a party thereto ("**Indemnified Damages**"), to which any of them may reasonably become subject insofar as such Claims (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of a material fact in a Registration Statement or any post-effective amendment thereto or in any filing made in connection with the qualification of the offering under the securities or other "blue sky" laws of any jurisdiction in which Registrable Securities are offered ("**Blue Sky Filing**"), or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus if used prior to the effective date of such Registration Statement, or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in light of the circumstances under which the statements therein were made, not misleading, (iii) any violation or alleged violation by the Company of the 1933 Act, the 1934 Act, any other law, including, without limitation, any state securities law, or any rule or regulation thereunder relating to the offer or sale of the Registrable Securities pursuant to a Registration Statement or (iv) any violation of this Agreement (the matters in the foregoing clauses (i) through (iv) being, collectively, "**Violations**"). Subject to Section 6(c), the Company shall reimburse the Indemnified Persons, promptly as such expenses are incurred and are due and payable, for reasonable legal fees or other reasonable expenses incurred by them in connection with investigating or defending any such Claim. Notwithstanding anything to the contrary contained herein, the indemnification agreement contained in this Section 6(a): (i) shall not apply to a Claim by an Indemnified Person arising out of or based upon a Violation which occurs in reliance upon and in conformity with information furnished to the Company by such Indemnified Person for such Indemnified Person expressly for use in connection with the preparation of the Registration Statement or any such amendment thereof or supplement thereto; and (ii) shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Person and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(b) In connection with any Registration Statement in which an Investor is participating, each such Investor agrees to severally and not jointly indemnify, hold harmless and defend, to the same extent and in the same manner as is set forth in Section 6(a), the Company, each of its directors, each of its officers who signs the Registration Statement and each Person, if any, who controls the Company within the meaning of the 1933 Act or the 1934 Act (each, an "**Indemnified Party**"), against any Claim or Indemnified Damages to which any of them may become subject, under the 1933 Act, the 1934 Act or otherwise, insofar as such Claim or Indemnified Damages arise out of or are based upon any Violation, in each case to the extent, and only to the extent, that such Violation occurs in reliance upon and in conformity with information furnished to the Company by such Investor expressly for use in connection with such Registration Statement in the "Plan of Distribution" or "Selling Shareholders" sections thereof; and, subject to Section 6(c), such Investor shall reimburse the Indemnified Party for any legal or other expenses reasonably incurred by an Indemnified Party in connection with investigating or defending any such Claim; provided, however, that the indemnity agreement contained in this Section 6(b) and the agreement with respect to contribution contained in Section 7 shall not apply to amounts paid in settlement of any Claim if such settlement is effected without the prior written consent of such Investor, which consent shall not be unreasonably withheld or delayed; provided, further, however, that the Investor shall be liable under this Section 6(b) for only that amount of a Claim or Indemnified Damages as does not exceed the net proceeds to such Investor as a result of the sale of Registrable Securities pursuant to such Registration Statement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of the Registrable Securities by the Investors pursuant to Section 9.

(c) Promptly after receipt by an Indemnified Person or Indemnified Party under this Section 6 of notice of the commencement of any action or proceeding (including any governmental action or proceeding) involving a Claim, such Indemnified Person or Indemnified Party shall, if a Claim in respect thereof is to be made against any indemnifying party under this Section 6, deliver to the indemnifying party a written notice of the commencement thereof, and the indemnifying party shall have the right to participate in, and, to the extent the indemnifying party so desires and has acknowledged its indemnification obligations hereunder in writing, jointly with any other indemnifying party similarly noticed, to assume control of the defense thereof with counsel mutually satisfactory to the indemnifying party and the Indemnified Person or the Indemnified Party, as the case may be; provided, however, that an Indemnified Person or Indemnified Party shall have the right to retain its own counsel with the fees and expenses of not more than one counsel for all such Indemnified Person or Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the Indemnified Person or Indemnified Party, as applicable, the representation by such counsel of the Indemnified Person or Indemnified Party and the indemnifying party would be inappropriate due to differing interests between such Indemnified Person or Indemnified Party and any other party represented by such counsel in such proceeding. In the case of an Indemnified Person, legal counsel referred to in the immediately preceding sentence shall be selected by the Investors holding at least a majority in interest of the Registrable Securities included in the Registration Statement to which the Claim relates. The Indemnified Person or Indemnified Party shall reasonably cooperate with the indemnifying party in connection with any negotiation or defense of any such action or Claim by the indemnifying party and shall furnish to the indemnifying party all information reasonably available to the Indemnified Person or Indemnified Party which relates to such action or Claim. The indemnifying party shall keep the Indemnified Person or Indemnified Party fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. No indemnifying party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent, provided, however, that the indemnifying party shall not unreasonably withhold, delay or condition its consent. No indemnifying party shall, without the prior written consent of the Indemnified Person or Indemnified Party, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Person or Indemnified Person of a release from all liability in respect to such Claim or litigation and such settlement shall not include any admission as to fault on the part of the Indemnified Party. Following indemnification as provided for hereunder, the indemnifying party shall be subrogated to all rights of the Indemnified Person or Indemnified Party with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action shall not relieve such indemnifying party of any liability to the Indemnified Person or Indemnified Party under this Section 6, except to the extent that the indemnifying party is materially prejudiced in its ability to defend such action.

(d) The indemnification required by this Section 6 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or Indemnified Damages are incurred.

(e) The indemnity agreements contained herein shall be in addition to (i) any cause of action or similar right of the Indemnified Party or Indemnified Person against the indemnifying party or others, and (ii) any liabilities the indemnifying party may be subject to pursuant to the law.

7. Contribution.

To the extent any indemnification by an indemnifying party is prohibited or limited by law, the indemnifying party agrees to make the maximum contribution with respect to any amounts for which it would otherwise be liable under Section 6 to the fullest extent permitted by law; provided, however, that: (i) no Person involved in the sale of Registrable Securities which Person is guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) in connection with such sale shall be entitled to contribution from any Person involved in such sale of Registrable Securities who was not guilty of fraudulent misrepresentation; and (ii) contribution by any seller of Registrable Securities shall be limited in amount to the amount of net proceeds received by such seller from the sale of such Registrable Securities pursuant to such Registration Statement.

8. Reports Under the 1934 Act.

With a view to making available to the Investors the benefits of Rule 144 promulgated under the 1933 Act or any other similar rule or regulation of the SEC that may at any time permit the Investors to sell securities of the Company to the public without registration ("**Rule 144**"), the Company agrees to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the 1933 Act and the 1934 Act so long as the Company remains subject to such requirements and the filing of such reports and other documents is required for the applicable provisions of Rule 144; and

(c) furnish to each Investor so long as such Investor owns Registrable Securities, promptly upon request, a written statement by the Company, if true, that it has complied with the reporting requirements of the 1933 Act and the 1934 Act and that it has satisfied the current public information provisions set forth in Rule 144.

9. Assignment of Registration Rights.

The rights under this Agreement shall be automatically assignable by the Investors to any transferee of all or any portion of such Investor's Registrable Securities if: (i) the Investor agrees in writing with the transferee or assignee to assign such rights, and a copy of such agreement is furnished to the Company within a reasonable time after such assignment; (ii) the Company is, within a reasonable time after such transfer or assignment, furnished with written notice of (a) the name and address of such transferee or assignee, and (b) the securities with respect to which such registration rights are being transferred or assigned; (iii) immediately following such transfer or assignment the further disposition of such securities by the transferee or assignee is restricted under the 1933 Act or applicable state securities laws; (iv) at or before the time the Company receives the written notice contemplated by clause (ii) of this sentence the transferee or assignee agrees in writing with the Company to be bound by all of the provisions contained herein; and (v) such transfer shall have been made in accordance with the applicable requirements of the Securities Acquisition Agreements.

10. Amendment of Registration Rights.

Provisions of this Agreement may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Required Holders; provided that any such amendment or waiver that complies with the foregoing but that disproportionately, materially and adversely affects the rights and obligations of any Investor relative to the comparable rights and obligations of the other Investors shall require the prior written consent of such adversely affected Investor. Any amendment or waiver effected in accordance with this Section 10 shall be binding upon each Investor and the Company. No such amendment shall be effective to the extent that it applies to less than all of the holders of the Registrable Securities. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration (other than the reimbursement of legal fees) also is offered to all of the parties to this Agreement.

11. Miscellaneous.

(a) A Person is deemed to be a holder of Registrable Securities whenever such Person owns or is deemed to own of record such Registrable Securities. If the Company receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, the Company shall act upon the basis of instructions, notice or election received from such record owner of such Registrable Securities.

(b) Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) personally served, (ii) deposited in the mail, registered or certified, return receipt requested, postage prepaid, (iii) delivered by reputable air courier service with charges prepaid, or (iv) transmitted by hand delivery or telegram, or (v) transmitted via electronic mail, in each case addressed as set forth below or to such other address as such party shall have specified most recently by written notice. Any notice or other communication required or permitted to be given hereunder shall be deemed effective (a) upon hand delivery at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received), or the first business day following such delivery (if delivered other than on a business day during normal business hours where such notice is to be received), (b) on the second business day following the date of mailing by express courier service, fully prepaid, addressed to such address, or upon actual receipt of such mailing, whichever shall first occur or (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient on a Business Day, and on the next Business Day if sent after normal business hours of the recipient on a non-Business Day. The addresses and email addresses for such communications shall be:

If to the Company:

XpresSpa Group, Inc.
780 Third Avenue, 12th Floor
New York, NY 10017
Attn: Douglas Satzman, CEO
Email: notices@xpresspagroup.com

With a copy (for informational purposes only) to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Chrysler Center
666 3rd Avenue
New York, NY 10017
Attn: Kenneth R. Koch, Esq.
Email: krkoch@mintz.com

If to the Transfer Agent:

American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219
Fax: (718) 921-8334

If to Legal Counsel:

Sills Cummis & Gross, P.C.
101 Park Avenue
29th Floor
New York, NY 10178
Attn: Brian A. Haskel, Esq.
Email: bhaskel@sillscummis.com

If to Investor , to its address and/or email address set forth on the Schedule of Investors attached hereto, with copies to Investor 's representatives as set forth on the Schedule of Investors, or to such other address and/or email address to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) calendar days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's email containing the time, date, and transmission message or (C) provided by a courier or overnight courier service shall be rebuttable evidence of personal service or receipt from a nationally recognized overnight delivery service in accordance with clause (i), (ii) or (iii) above, respectively.

(c) Failure of any party to exercise any right or remedy under this Agreement or otherwise, or delay by a party in exercising such right or remedy, shall not operate as a waiver thereof.

(d) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(e) If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(f) This Agreement, the Securities Acquisition Agreements and the Loan Documents (as defined in the Credit Agreement) and the instruments referenced herein and therein constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, the other Transaction Documents and the instruments referenced herein and therein supersede all prior agreements and understandings among the parties hereto with respect to the subject matter hereof and thereof.

(g) Subject to the requirements of Section 9, this Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of each of the parties hereto.

(h) The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(i) This Agreement may be executed in identical counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. This Agreement, once executed by a party, may be delivered to the other party hereto by email transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

(j) Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) [INTENTIONALLY OMITTED].

(l) The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

(m) This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(n) The obligations of each Investor hereunder are several and not joint with the obligations of any other Investor, and no provision of this Agreement is intended to confer any obligations on any Investor vis-à-vis any other Investor. Nothing contained herein, and no action taken by any Investor pursuant hereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated herein.

(o) Legal Counsel may resign as Legal Counsel on five (5) calendar days' prior notice to the Company and B3D, LLC. Legal Counsel may rely on instructions from B3D, LLC without communicating or verifying such instructions with any other Investor.

* * * * *

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

COMPANY:

XPRESSPA GROUP, INC.

By: _____

Name: Douglas Satzman

Title: Chief Executive Officer

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

[SIGNATURE PAGE OF INVESTORS TO XPRESSPA GROUP, INC. RRA]

Name of Investor: B3D, LLC

Address of Investor: 9935D Rea Road, #317, Charlotte NC 28277

Signature of Authorized Signatory of Purchaser: _____

Name of Authorized Signatory: Brian Daly

Title of Authorized Signatory: Manager

[SIGNATURE PAGES CONTINUE]

SCHEDULE OF INVESTORS

B3D, LLC
9935D Rea Road
#317
Charlotte NC 28277

Attention: Brian Daly, Manager
Telephone: (914) 482-3992
Email: Daly2020@outlook.com

**FORM OF NOTICE OF EFFECTIVENESS
OF REGISTRATION STATEMENT**

American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219
Fax: (718) 921-8334

Re: XpresSpa Group, Inc.

Ladies and Gentlemen:

We have been requested by XpresSpa Group, Inc., a Delaware corporation (the "**Company**"), and have represented the Company in connection with that certain agreement and related documents, dated as of July __, 2019 (collectively the "**Securities Acquisition Agreements**"), entered into by and among the Company and the Lender named therein (collectively, the "**Holder**s") pursuant to which the Company issued to the Holders a non-convertible promissory note (the "**Note**") which, upon the Company's receipt of stockholder approval pursuant to Nasdaq Listing Rule 5635(d), will become convertible for shares of the Company's common stock, par value \$0.01 per share (the "**Common Stock**") (the shares of Common Stock issuable pursuant to the terms of the Note and Securities Acquisition Agreements, collectively, the "**Conversion Shares**"). Pursuant to the Securities Purchase Agreement, the Company also has entered into a Registration Rights Agreement with the Holders (the "**Registration Rights Agreement**") pursuant to which the Company agreed, among other things, to register the resale of the Registrable Securities (as defined in the Registration Rights Agreement), including the Conversion Shares issuable pursuant to the Securities Acquisition Agreements under the Securities Act of 1933, as amended (the "**1933 Act**"). The description of the Registrable Securities are set forth on **Schedule A** hereto [Selling Shareholder Table]. In connection with the Company's obligations under the Registration Rights Agreement, on July __, 2019, the Company filed a Registration Statement on Form S-3 (File No. 333-_____) (the "**Registration Statement**") with the Securities and Exchange Commission (the "**SEC**") relating to the Registrable Securities which names each of the Holders as a selling shareholder thereunder.

In connection with the foregoing, we advise you that a member of the SEC's staff has advised us by telephone that the SEC has entered an order declaring the Registration Statement effective under the 1933 Act at [ENTER TIME OF EFFECTIVENESS] on [ENTER DATE OF EFFECTIVENESS]. We have no knowledge, subsequent to such telephonic conversation with the SEC's staff, that any stop order suspending its effectiveness has been issued or that any proceedings for that purpose are pending before, or threatened by, the SEC. Based on the foregoing, the Registrable Securities set forth on **Schedule A** hereto are available for resale under the 1933 Act pursuant to the Registration Statement.

This letter, unless and until subsequently revoked or modified orally by [REQUIRES COMPLETION] or in writing from any member of this firm (which writing may include email correspondence), shall serve as our standing instruction to you that the Registrable Securities set forth on **Schedule A** hereto are freely transferable by the Holders pursuant to the Registration Statement. You need not require further letters from us to effect any future legend-free issuance or reissuance of Registrable Securities to the Holders as contemplated by the Company's Irrevocable Transfer Agent Instructions dated July [●], 2019.

Very truly yours,

SELLING SHAREHOLDERS

The shares of Common Stock being offered by the selling stockholders are those issued upon conversion of the Notes that were issued to the selling stockholders pursuant to the Securities Acquisition Agreements dated as of July __, 2019 (the “**Securities Acquisitions Agreement**”), by and among the Company and the investors named therein. We are registering the shares of Common Stock in order to permit the selling stockholders to offer the shares for resale from time to time. Except for the ownership of the shares of common stock, the selling shareholders have not had any material relationship with us within the past three years.

The table below lists the selling stockholders and other information regarding the beneficial ownership of the shares of Common Stock by each of the selling stockholders. The second column lists the number of shares of Common Stock beneficially owned by each selling stockholder, based on its ownership of the Note, as of _____, 2019.

The third column lists the shares of Common Stock being offered by this prospectus by the selling stockholders and does not take in account any limitations on (i) conversion of the Note or issuance of Common Stock.

In accordance with the terms of a registration rights agreement with the selling stockholders (the “**Registration Rights Agreement**”), this prospectus generally covers the resale of at least the sum of (i) the number of shares of Common Stock issued upon conversion of the Notes issued pursuant to the Securities Purchase Agreement as of the trading day immediately preceding the date the registration statement is initially filed with the SEC, as of the trading day immediately preceding the date the registration statement is initially filed with the SEC. The fourth column assumes the sale of all of the shares offered by the selling stockholders pursuant to this prospectus.

Under the terms of the Notes, a selling stockholder may not convert the Notes to the extent such exercise would cause such selling stockholder, together with its affiliates, to beneficially own a number of shares of Common Stock which would exceed 9.99% of our then outstanding shares of Common Stock following such exercise. The number of shares in the second column does not reflect these limitations. The selling stockholders may sell all, some or none of their shares in this offering. See “Plan of Distribution.”

Name of Selling Shareholder	Number of Shares of Common Stock Owned Prior to Offering	Maximum Number of Shares of Common Stock to be Sold Pursuant to this Prospectus	Number of Shares of Common Stock Owned After Offering

PLAN OF DISTRIBUTION

We are registering the shares of Common Stock that may be issued upon conversion of the Notes issued pursuant to the Securities Purchase Agreement and upon exercise of the Warrants issued pursuant to the terms of the Securities Purchase Agreement to permit the resale of these shares of Common Stock by the holders of such shares from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the shares of Common Stock. We will bear all fees and expenses incident to our obligation to register the shares of Common Stock.

The selling stockholders may sell all or a portion of the shares of Common Stock beneficially owned by them and offered hereby from time to time directly or through one or more underwriters, broker-dealers or agents. If the shares of Common Stock are sold through underwriters or broker-dealers, the selling stockholders will be responsible for underwriting discounts or commissions or agent's commissions. The shares of Common Stock may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale, or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions, pursuant to one or more of the following methods:

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- through the writing of options, whether such options are listed on an options exchange or otherwise;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales;
- sales pursuant to Rule 144;
- broker-dealers may agree with the selling securityholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

If the selling stockholders effect such transactions by selling shares of Common Stock to or through underwriters, broker-dealers or agents, such underwriters, broker-dealers or agents may receive commissions in the form of discounts, concessions or commissions from the selling stockholders or commissions from purchasers of the shares of Common Stock for whom they may act as agent or to whom they may sell as principal (which discounts, concessions or commissions as to particular underwriters, broker-dealers or agents may be in excess of those customary in the types of transactions involved). In connection with sales of the shares of Common Stock or otherwise, the selling stockholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the shares of Common Stock in the course of hedging in positions they assume. The selling stockholders may also sell shares of Common Stock short and deliver shares of Common Stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling stockholders may also loan or pledge shares of Common Stock to broker-dealers that in turn may sell such shares.

The selling stockholders may pledge or grant a security interest in some or all of the shares of Common Stock, Note owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of Common Stock from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act of 1933, as amended, amending, if necessary, the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer and donate the shares of Common Stock in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

The selling stockholders and any broker-dealer participating in the distribution of the shares of Common Stock may be deemed to be "underwriters" within the meaning of the Securities Act, and any commission paid, or any discounts or concessions allowed to, any such broker-dealer may be deemed to be underwriting commissions or discounts under the Securities Act. At the time a particular offering of the shares of Common Stock is made, a prospectus supplement, if required, will be distributed which will set forth the aggregate amount of shares of Common Stock being offered and the terms of the offering, including the name or names of any broker-dealers or agents, any discounts, commissions and other terms constituting compensation from the selling stockholders and any discounts, commissions or concessions allowed or re-allowed or paid to broker-dealers.

Under the securities laws of some states, the shares of Common Stock may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the shares of Common Stock may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that any selling stockholder will sell any or all of the shares of Common Stock registered pursuant to the registration statement, of which this prospectus forms a part.

The selling stockholders and any other person participating in such distribution will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including, without limitation, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the shares of Common Stock by the selling stockholders and any other participating person. Regulation M may also restrict the ability of any person engaged in the distribution of the shares of Common Stock to engage in market-making activities with respect to the shares of Common Stock. All of the foregoing may affect the marketability of the shares of Common Stock and the ability of any person or entity to engage in market-making activities with respect to the shares of Common Stock.

We will pay all expenses of the registration of the shares of Common Stock pursuant to the Registration Rights Agreement, estimated to be \$[] in total, including, without limitation, SEC filing fees and expenses of compliance with state securities or "blue sky" laws; provided, however, that a selling stockholder will pay all underwriting discounts and selling commissions, if any. We will indemnify the selling stockholders against liabilities, including some liabilities under the Securities Act, in accordance with the Registration Rights Agreement, or the selling stockholders will be entitled to contribution. We may be indemnified by the selling stockholders against civil liabilities, including liabilities under the Securities Act, that may arise from any written information furnished to us by the selling stockholder specifically for use in this prospectus, in accordance with the Registration Rights Agreement, or we may be entitled to contribution.

Once sold under the registration statement, of which this prospectus forms a part, the shares of Common Stock will be freely tradable in the hands of persons other than our affiliates.

**AMENDMENT TO SECURITIES PURCHASE AGREEMENT
AND CLASS A WARRANTS AND CLASS B WARRANTS**

This Amendment (this "Amendment") to the Securities Purchase Agreement dated as of May 15, 2018 (the "SPA") and to the Class A Warrants and Class B Warrants (together, the "Warrants") to purchase common stock issued pursuant to the SPA is made and entered into as of July 8, 2019, among XpresSpa Group, Inc., a Delaware corporation (the "Company"), and the purchasers (as identified on the signature pages hereto), constituting a Majority in Interest (the "Specified Purchasers"). Capitalized terms used herein but not defined shall have the meaning ascribed to such terms in the SPA.

RECITALS:

WHEREAS, the Company, the Specified Purchasers and certain other parties thereto entered into a the SPA pursuant to which the Specified Purchasers were issued Notes and the Warrants; and

WHEREAS, (i) pursuant to Section 5.5 of the SPA, no provision of the SPA may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Majority in Interest and (ii) pursuant to Section 9 of the Warrants, no provision of the Warrants may be amended or waived without the written consent of the Company and the Required Holders;

WHEREAS, the Specified Purchasers constitute a Majority in Interest and the Required Holders;

WHEREAS, the Company and the Specified Purchasers desire to amend certain terms of the SPA and the Warrants; and

WHEREAS, as consideration for the Specified Purchasers agreeing to the terms of this Amendment, subject to the receipt of approval of the Company's shareholders, the Company will issue shares of Series F Preferred Stock to the Holders as set forth on Schedule A.

NOW, THEREFORE, in consideration of the premises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Section 1.1 of the SPA is hereby amended and restated to delete the following definitions:
 - "Equity Line of Credit";
 - "Variable Priced Equity Linked Instruments"; and
 - "Variable Rate Transaction."
 2. The definition of "Exempt Issuance" in Section 1.1 of the SPA is hereby amended and restated as follows:
-

“Exempt Issuance” means the issuance of (a) shares of Common Stock and options to officers, directors, employees or consultants of the Company after the Closing Date pursuant to plans approved by the shareholders of the Company and which issuances are approved by a majority of the independent members of a committee of the board of directors, (b) securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities and any term thereof have not been amended since the date of this Agreement to increase the number of such securities or to decrease the issue price, exercise price, exchange price or conversion price of such securities and which securities and the principal terms thereof are set forth on Schedule 3.1(g), and described in the SEC Reports, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that any such issuance shall only be to a Person (or to the 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 Company and shall be intended to provide to the Company substantial additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities; provided, however, that the securities to be issued pursuant to that certain Securities Purchase Agreement dated as of July 8, 2019 by and between the Company and Calm.com shall not be deemed to be an Exempt Issuance, (d) up to 25,000 shares of Common Stock, (e) securities as payment for investment banking services provided to the Company, (f) securities issued to third party vendors as payment for goods or services, (g) securities issued to the Company’s Airport Concession Disadvantaged Business Enterprise partners, (h) securities issued or issuable to the Purchasers and their assigns pursuant to this Agreement, the Notes or the Warrants and other Transaction Documents, including without limitation, Section 4.17 herein, or upon exercise, conversion or exchange of any such securities, and (i) securities issued as payment of interest pursuant to the Credit Agreement dated as of April 22, 2015, as subsequently amended through the date hereof by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd. (including, without limitation, that certain Fourth Amendment to Credit Agreement, dated as of July 8, 2019, by and between the Company and B3D, LLC)¹.”

3. Section 3.1(rr) of the SPA is hereby deleted in its entirety.

4. Section 4.13 of the SPA is hereby irrevocably waived in its entirety with respect to the transactions contemplated by (a) the Securities Purchase Agreement dated as of July 8, 2019 by and between the Company and Calm.com, (b) the amendment to the Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock, (c) the Credit Agreement dated as of April 22, 2015, as subsequently amended through the date hereof by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd. (including, without limitation, that certain Fourth Amendment to Credit Agreement, dated as of July 8, 2019, by and between the Company and B3D, LLC), (d) the amendment to the Certificate of Designation of Preferences, Rights and Limitations of Series D Convertible Preferred Stock, (e) the amendment to certain outstanding warrants issued in December 2016 to the holders of the Company’s Series D Convertible Preferred Stock, (f) the Certificate of Designation of Preferences, Rights and Limitations of the Series F Preferred Stock and (g) the transactions contemplated by this Amendment. Upon receipt of Shareholder Approval (as defined below), Section 4.13 of the SPA shall be deleted in its entirety.

5. Section 4.17 of the SPA is hereby deleted in its entirety.

6. Section 4.24 of the SPA is hereby deleted in its entirety.

7. Section 1(c) of the Class A Warrants is hereby amended and restated in its entirety as follows:

¹ Pursuant to the terms of the Fourth Amendment to Credit Agreement, subject to Shareholder Approval, the number of shares to be issued as payment of interest will be determined by dividing the amount of the Share Portion (as defined in the Fourth Amendment to Credit Agreement) set forth in the exercise notice by a price per share of Common Stock equal to ninety percent (90%) of the VWAP (as defined in the Fourth Amendment to Credit Agreement) on the trading date immediately preceding the date of the exercise notice.

“Company’s Failure to Timely Deliver Securities. If (I) the Company shall fail for any reason or for no reason on or prior to the Share Delivery Date either (a) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program and the Warrant Shares are eligible to be issued without a restrictive legend, to issue to the Holder a certificate without any restrictive legend for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company’s share register or (b) if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program and the Warrant Shares are eligible to be issued without a restrictive legend, to credit the Holder’s balance account with DTC, for such number of shares of Common Stock to which the Holder is entitled upon the Holder’s exercise of this Warrant and the Warrant Shares are not eligible to be issued without a restrictive legend, to issue and dispatch by overnight courier to the address as specified in the Exercise Notice for delivery on or before the Share Delivery Date a certificate, registered in the Company’s share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise, (II) with respect to only the Warrant Shares originally issuable pursuant to this Warrant prior to any adjustment pursuant to Section 2(a) of this Warrant (the “Base Warrant Shares”), after the Initial Effective Date (as defined in the Registration Rights Agreement) and during the Registration Period (as defined in the Registration Rights Agreement), (x) the Registration Statement (as defined in the Registration Rights Agreement) covering the resale of all of the Base Warrant Shares that are the subject of the Exercise Notice (the “Unavailable Base Warrant Shares”) is not available for the resale of such Unavailable Base Warrant Shares, (y) the Company fails to promptly, but in no event later than as required pursuant to the Registration Rights Agreement so notify the Holder and (z) the Company fails to, on or prior to the Share Delivery Date, deliver the Base Warrant Shares electronically without any restrictive legend by crediting such aggregate number of Base Warrant Shares to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal At Custodian system, or (III) with respect to any Additional Shares (as defined below), after 90 days after the Issuance Date (the “Additional Shares Effectiveness Deadline”), (x) a registration statement covering the resale of all of the Additional Shares that are the subject of the Exercise Notice (the “Unavailable Additional Shares”) is not available for the resale of such Unavailable Additional Shares, (y) the Company fails to promptly so notify the Holder and (z) the Company fails to, on or prior to the Share Delivery Date, deliver the Additional Shares electronically without any restrictive legend by crediting such aggregate number of Additional Shares to which the Holder is entitled pursuant to such exercise to the Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clauses (II) and (III) are hereinafter referred to as a “Notice Failure”) and either a Notice Failure or an event described in clause (I) above (referred to herein as an “Exercise Failure”) occurs, then, in addition to all other remedies available to the Holder, (X) the Company shall pay in cash to the Holder on each day after the Share Delivery Date and during such Notice Failure or Exercise Failure an amount equal to 1.0% of the product of (A) the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which the Holder is entitled, and (B) the higher of (i) the then in effect Exercise Price of this Warrant or (ii) the closing price of the Common Stock on the date of the applicable Exercise Notice, and (Y) the Holder, upon written notice to the Company, may void its Exercise Notice with respect to, and retain or have returned, as the case may be, any portion of this Warrant that has not been exercised pursuant to such Exercise Notice; provided that the voiding of an Exercise Notice shall not affect the Company’s obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 1(c) or otherwise. If the Company is required to pay liquidated damages hereunder solely as a result of a Notice Failure, the liquidated damages related thereto will cease to accrue when the registration statement requirements set forth in the Registration Rights Agreement are complied with. For the avoidance of doubt, the Company acknowledges that the Company may be liable for Registration Delay Payments pursuant to the Registration Rights Agreement in the event of an Exercise Failure or Notice Failure. In the event of a Notice Failure, damages will accrue at the higher of (a) 1.0% of the product of (A) the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Date and to which the Holder is entitled, and (B) the higher of (i) the then in effect Exercise Price of this Warrant or (ii) the closing price of the Common Stock on the date of the applicable Exercise Notice and (b) the rate set forth in the Registration Rights Agreement; provided, however, that damages shall not be cumulative. In addition to the foregoing, if an Exercise Failure or Notice Failure occurs, and if on or after the Share Delivery Date the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale through a broker by the Holder of shares of Common Stock issuable upon such exercise that the Holder anticipated receiving from the Company (a “Buy-In”), then the Company 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 other reasonable out of pocket expenses related to the Buy-In, if any) for the shares of Common Stock so purchased (such number of shares not to exceed the number of Warrant Shares failed to be delivered) (the “Buy-In Price”), at which point the Company’s obligation to deliver such certificate (and to issue such shares of Common Stock) or credit such Holder’s balance account with DTC for such shares of Common Stock shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit such Holder’s balance account with DTC, as applicable, 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 sale price of the Common Stock at which the sell order giving rise to such purchase obligation was executed. Nothing shall limit the Holder’s right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company’s failure to timely deliver certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the exercise of this Warrant as required pursuant to the terms hereof.”

8. The Company and the Specified Purchasers hereby acknowledge that the Class B Warrants shall be terminated, cancelled and extinguished immediately and of no further force or effect, and the Company shall be released from its obligations thereunder. The Company acknowledges and agrees that subject to approval of The Nasdaq Stock Market, an additional 178,231 shares of Common Stock originally allocated to the Class B Warrants shall be allocated to the holders of the Class A Warrants as indicated on Schedule A.

9. As consideration for the Specified Purchasers agreeing to the terms of this Amendment, the Company will issue shares of Series F Preferred Stock to the Holders as set forth on Schedule A; provided, however that if Shareholder Approval is not received, the shares of Series F Preferred Stock issued to the Holders shall be immediately forfeited by the Holders. The shares of Series F Convertible Preferred Stock shall not be convertible into shares of Common Stock until receipt of approval of the Company's shareholders (the "Shareholder Approval") for the issuance of any additional shares of its Common Stock that would be issued pursuant to this Amendment (and, for the avoidance of doubt, with respect to any Class A Warrants to purchase shares of Common Stock in excess of 344,356 shares of Common Stock) and pursuant to Sections 6 and 7.1.3 of the Certificate of Designation of Preferences, Rights and Limitations of Series F Convertible Preferred Stock (the "Series F Certificate of Designation").

10. The Company undertakes to use commercially reasonable efforts to obtain within one hundred (120) days after the date of this Amendment, Shareholder Approval for the transactions contemplated by this Amendment, including, without limitation, (a) the issuance of all the shares of its Common Stock that could be issued pursuant to Sections 6 and 7.1.3 of the Series F Certificate of Designation and (b) the reduction of the exercise price with respect to the Additional Shares (as defined in the Class A Warrants) to be issued in connection with Section 2(a) of the Class A Warrants to \$2.00; provided, that in no event shall the Company seek the consent of its shareholders for the approval of the reduction in the exercise or conversion prices of any other security of the Company, whether or not outstanding on the date hereof, unless such approval is conditional upon simultaneous receipt of the Shareholder Approval. If, despite the Company's commercially reasonable efforts the Shareholder Approval is not initially obtained, the Company shall cause an additional shareholder meeting to be held every three (3) months thereafter until such Shareholder Approval is obtained. Notwithstanding anything to the contrary contained in this Section 10, the Company shall have no obligation to solicit or obtain the Shareholder Approval if Nasdaq Listing Rule 5635(d) no longer applies to the Company or would not prohibit a Holder from acquiring shares of Common Stock pursuant to the Series F Certificate of Designation or Class A Warrants without receipt of such Shareholder Approval.

11. The Company and the Specified Purchasers hereby acknowledge and agree that the additional shares of Common Stock issuable pursuant to, and as a result of, the terms of this Amendment shall be deemed to be an “Exempt Issuance” pursuant to the definition of “Exempt Issuance” as defined in the SPA.

12. The Company represents that the holding period of the Class A Warrants as determined under Rule 144 is not affected by the terms of this Amendment and tacks back to the original issue date of the Class A Warrant.

13. Except with respect to the material terms and conditions of this Amendment, which the Company undertakes to publicly disclose in a press release and a Form 8-K to be filed with the Securities and Exchange Commission no later than two (2) business days after the date of this Amendment, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide the Holder or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto such Holder shall have consented to the receipt of such information and agreed with the Company to keep such information confidential.

14. Except as explicitly modified herein, the SPA and Class A Warrant shall remain in full force and effect.

15. This Amendment shall be governed in accordance with terms of the SPA.

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

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Schedule A

Holder	Number of Shares of Series F Preferred Stock to be issued by the Company²	Number of Class A Warrants to initially be subject to \$2.00 exercise price	Number of additional Class A Warrants to be subject to \$2.00 exercise price upon Nasdaq approval
Alpha Capital Anstalt	4,056	174,575	90,725
Anson Investments Master Fund LP	901	38,794	20,161
Brio Capital Master Fund Ltd.	450	19,397	10,080
The Hewlett Fund LP	630	27,156	14,112
Intracoastal Capital, LLC	901	38,794	20,161
L1 Capital Global Opportunities Master Fund	901	38,794	20,161
Palladium Capital Advisors, LLC	1,157	6,789	3,528

² Series F Preferred Stock to have a \$100 stated value – each share of Series F Preferred Stock will initially convert into 50 shares of common stock

IN WITNESS WHEREOF, the Company and the Purchaser have executed this Amendment as of the date first above written.

COMPANY

XpresSpa Group, Inc.

By:
Its:

[Purchaser signature page follows]

IN WITNESS WHEREOF, the Company and the Purchaser have executed this Amendment as of the date first above written.

Alpha Capital Anstalt
[Print Name of Purchaser]

[Signature]

Name:

Title:

Anson Investments Master Fund LP
[Print Name of Purchaser]

[Signature]

Name:
Title:

Brio Capital Master Fund Ltd.
[Print Name of Purchaser]

[Signature]

Name:
Title:

The Hewlett Fund LP
[Print Name of Purchaser]

[Signature]

Name:
Title:

Intracoastal Capital, LLC
[Print Name of Purchaser]

[Signature]

Name:
Title:

L1 Capital Global Opportunities Master Fund
[Print Name of Purchaser]

[Signature]

Name:
Title:

Palladium Capital Advisors, LLC
[Print Name of Purchaser]

[Signature]

Name:
Title:



XpresSpa Strengthens its Liquidity, Capital Structure and Strategic Partnership

Generates First Quarter of Positive Comparable Store Sales Since 2017

NEW YORK, July 8, 2019 - XpresSpa Group, Inc. (Nasdaq: XSPA), a health and wellness holding company, today announced that it has improved its capital structure and significantly strengthened its financial condition through a series of debt and equity transactions. This new round of funding provides the Company the necessary working capital for operations, new initiatives to improve the business and capital to continue to renovate spas and build five new spas by the end of 2019.

Doug Satzman, XpresSpa Group CEO, stated, “While these series of transactions dilute existing common shareholders in the short-term, we are removing the liquidation preference of the Series D preferred shareholders, which is a necessary positive step forward for XpresSpa. Our Board had limited options to simplify and enhance our capital structure, address potential loan defaults, and secure additional working capital to support operations, invest in new technology, attract top talent, renovate spas and build five new spas by year-end. We have now substantially improved our balance sheet through the restructuring and reduction of outstanding secured debt and conversion of preferred shares to common, subject to shareholders’ approval. We thank our investors for their commitment and for providing us with greater flexibility as we execute our nearer-term and longer-term priorities and work to build a sustainable and enduring brand that is already demonstrating upward trending results.”

- The Company recently eliminated over \$2.3 million of secured convertible notes due November 17, 2019 pursuant to an agreement by which the notes were converted into an aggregate of 942,432 shares of underlying common stock (585,660 shares of common stock that were issued and 356,772 shares underlying warrants that were issued as a result of a beneficial ownership blocker) at a conversion price equal to \$2.48 per share.
 - B3D, LLC, XpresSpa’s senior secured lender, has agreed to amend the Company’s \$6.5 million senior secured note. The amendment extends the senior secured note’s maturity by 17 months to May 31, 2021, increases the principal amount by \$0.5 million, reduces the interest rate from 11.24% to 9.00%, provides the Company the option to conserve cash and pay interest in common stock and, subject to Shareholder Approval, the entire principal amount due of the senior secured note will be convertible into shares of common stock at a conversion price of \$2.00 per share. This amendment will enable the Company to deploy more capital to operations and eliminate its obligation to pay down or refinance the current principal amount of \$6.5 million by December 31, 2019.
 - The Company recently received a second capital infusion from Calm.com, Inc. of \$2.5 million in 5.00% unsecured convertible notes (the “Calm Note”) due May 31, 2022. Calm is the world’s #1 app for sleep, meditation and relaxation with over 50 million downloads and 75,000 new users daily. The outstanding principal balance of the Calm Note will be convertible at Calm’s option into shares of Series E Preferred Stock at a conversion price equal to \$3.10 per share. In addition, Calm was issued warrants to purchase 937,500 shares of common stock which are exercisable beginning six months from the time of issuance, have a term of five years, and feature an exercise price of \$2.00 per share.
-

- In addition, on July 8, 2019, holders constituting a majority of the outstanding shares of Series D Preferred Stock agreed to convert approximately \$24 million of the Series D 9% Convertible Preferred Stock into shares of common stock at a price of \$2.00 per share, subject to Shareholder Approval. The conversion of the Series D Preferred Stock creates a more simplified capital structure, aligns the holders of the Series D Preferred Stock with the common shareholders and removes the dilutive uncertainty associated with the Series D Preferred Stock when it automatically converted into common stock at maturity at the then current market price.
- Finally, the Company entered into an amendment with the investors to its May 2018 Securities Purchase Agreement to provide for, among other provisions, (i) the waiver of certain provisions regarding restrictions on subsequent equity sales and participation in subsequent financings, and the removal of certain such provisions upon receipt of Shareholder Approval, (ii) the amendment to certain provisions of the Class A Warrants issued pursuant to the May 2018 SPA to reduce the exercise price of the Class A Warrants issuable pursuant to anti-dilution price protection contained in such Class A Warrants to \$2.00 per share with respect to a limited number of Class A Warrants and to \$2.00 per share with respect to the remainder Class A Warrants following receipt of Shareholder Approval, (iii) the cancellation of all outstanding Class B Warrants and (iv) the establishment of a new class of preferred stock, to be designated Series F Convertible Preferred Stock and the issuance of 9,000 shares of such Series F Preferred Stock to the parties to the May 2018 SPA Amendment, which will be convertible into common stock upon receipt of Shareholder Approval.

Mr. Satzman continued, “We are grateful to our senior secured lender B3D, LLC for its continued commitment to our business and for the support and flexibility it has continued to provide to us by its willingness to once again restructure our senior secured credit facility. We are also pleased to receive our second investment from Calm, while also extending and broadening our strategic partnership. Looking ahead, we will be expanding our relationship to include XpresSpa’s international portfolio and we will collaborate on testing an expanded Calm brick-and-mortar experience at select domestic XpresSpa locations. We believe that these efforts will provide an even more holistic wellness experience for the traveler.”

Mr. Satzman concluded, “We also continue to execute on prioritized initiatives to improve performance. As we indicated in our first quarter 2019 earnings release, our sales momentum and employee engagement has been building since March when we marked our first month of positive comparable store sales growth since 2017. Encouragingly, this positive trend has now been sustained through June with the second quarter 2019 representing our first full quarter of positive comparable store sales in two years.”

Webcast

XpresSpa Group, Inc. will host a webcast to provide additional information and context on Wednesday, July 10, 2019 at 4:30 p.m. Eastern Time.

The webcast can be accessed from Investor Relations section of the Company's website at <http://xpresspagroup.com>. Visitors to the website should select the "Investors" tab and navigate to the "Events" link to access the webcast. An archive of the webcast will be available at the same location on the company's website at the same location shortly after the call has concluded.

About XpresSpa Group, Inc.

XpresSpa Group, Inc. (Nasdaq: XSPA) is a health and wellness holding company. XpresSpa Group's core asset, XpresSpa, is a leading airport retailer of spa services and related products, with 55 locations in 23 airports globally, as well as one off-airport spa at Westfield World Trade Center in New York City. XpresSpa offers services that are tailored specifically to the busy travel customer. XpresSpa is committed to providing exceptional customer experiences with its innovative premium spa services, as well as exclusive luxury travel products and accessories. XpresSpa serves almost one million customers per year at its locations in the United States, Netherlands, and the United Arab Emirates. To learn more about XpresSpa Group, visit: www.XpresSpaGroup.com. To learn more about XpresSpa, visit www.XpresSpa.com

About Calm.Com, Inc.

Calm is a leading global health and wellness brand with the #1 app for sleep, meditation and relaxation. Calm is on a mission to make the world happier and healthier. With hundreds of hours of original audio content, the Calm app helps users cope with some of the most important mental health issues of the modern age including anxiety, stress and insomnia. Apple's 2017 iPhone App of the Year and Inc.'s 19th fastest growing company boasts over 50 million downloads to date, averaging 75,000 new users daily.

Forward-Looking Statements

This press release contains "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, and Section 21E of the Securities Exchange Act of 1934. These include statements preceded by, followed by or that otherwise include the words "believes," "expects," "anticipates," "estimates," "projects," "intends," "should," "seeks," "future," "continue," or the negative of such terms, or other comparable terminology. Forward-looking statements relating to expectations about future results or events are based upon information available to XpresSpa Group as of today's date, and are not guarantees of the future performance of the company, and actual results may vary materially from the results and expectations discussed. Additional information concerning these and other risks is contained in XpresSpa Group's most recently filed Annual Report on Form 10-K, Quarterly Report on Form 10-Q, recent Current Reports on Form 8-K and other SEC filings. All subsequent written and oral forward-looking statements concerning XpresSpa Group, or other matters and attributable to XpresSpa Group or any person acting on its behalf are expressly qualified in their entirety by the cautionary statements above. XpresSpa Group does not undertake any obligation to publicly update any of these forward-looking statements to reflect events or circumstances that may arise after the date hereof.

Investor Relations:

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