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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2018

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

For the transition period from ___ to ___

Commission file number: 001-34785

XpresSpa Group, Inc.

(Exact Name of Registrant as Specified in its Charter)

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

(Registrant's Telephone Number, Including Area Code): **(212) 309-7549**

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

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

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

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

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

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

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

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

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

As of November 9, 2018, 34,546,518 shares of the registrant's common stock were outstanding.

XpresSpa Group, Inc. and Subsidiaries

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PART I - FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

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

	September 30, 2018 (Unaudited)	December 31, 2017
Current assets		
Cash and cash equivalents	$ 2,525	$ 6,368
Inventory	802	1,159
Other current assets	591	2,120
Assets held for disposal	109	6,446
Total current assets	4,027	16,093
Restricted cash	487	487
Property and equipment, net	15,005	15,797
Intangible assets, net	9,789	11,547
Goodwill	—	19,630
Other assets	3,356	1,686
Total assets	$ 32,664	$ 65,240
Current liabilities		
Accounts payable, accrued expenses and other current liabilities	$ 7,641	$ 8,736
Convertible notes, net	1,610	—
Liabilities held for disposal	40	3,761
Total current liabilities	9,291	12,497
Debt	6,500	6,500
Convertible notes, net	398	—
Derivative warrant liabilities	455	34
Other liabilities	265	370
Total liabilities	16,909	19,401
Commitments and contingencies (see Note 13)		
Stockholders' equity		
Series A Convertible Preferred stock, $0.01 par value per share; 6,968 shares authorized; 6,968 issued and none outstanding	—	—
Series B Convertible Preferred stock, $0.01 par value per share; 1,609,167 shares authorized; 1,609,167 issued and none outstanding	—	—
Series C Junior Preferred stock, $0.01 par value per share; 300,000 shares authorized; none issued and outstanding	—	—
Series D Convertible Preferred Stock, $0.01 par value per share; 500,000 shares authorized; 475,208 shares issued and 420,541 shares outstanding with a liquidation value of $20,186	4	4
Common stock, $0.01 par value per share; 150,000,000 shares authorized; 31,919,511 and 26,545,690 issued and outstanding as of September 30, 2018 and December 31, 2017, respectively	319	265
Additional paid-in capital	291,989	290,396
Accumulated deficit	(280,351)	(249,708)
Accumulated other comprehensive loss	(279)	(74)
Total stockholders' equity attributable to the Company	11,682	40,883
Noncontrolling interests	4,073	4,956
Total stockholders' equity	15,755	45,839
Total liabilities and stockholders' equity	$ 32,664	$ 65,240

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

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

	Three months ended September 30,		Nine months ended September 30,	
	2018	2017	2018	2017
Revenue				
Products and services	$ 12,922	$ 12,652	$ 37,760	$ 36,563
Other	—	200	800	300
Total revenue	12,922	12,852	38,560	36,863
Cost of sales				
Labor	5,997	7,086	18,697	18,178
Occupancy	1,996	1,950	6,216	5,704
Products and other operating costs	1,992	1,437	5,208	6,044
Total cost of sales	9,985	10,473	30,121	29,926
Depreciation and amortization	1,879	1,722	5,375	6,379
Goodwill impairment	—	—	19,630	—
General and administrative*	3,943	4,180	12,443	13,037
Total operating expenses	15,807	16,375	67,569	49,342
Operating loss from continuing operations	(2,885)	(3,523)	(29,009)	(12,479)
Interest expense	(624)	(183)	(1,212)	(549)
Other non-operating income (expense), net	378	(82)	877	(17)
Loss from continuing operations before income taxes	(3,131)	(3,788)	(29,344)	(13,045)
Income tax benefit (expense)	66	(57)	198	(284)
Consolidated net loss from continuing operations	(3,065)	(3,845)	(29,146)	(13,329)
Loss from discontinued operations before income taxes*	—	(699)	(1,115)	(4,474)
Income tax benefit (expense)	—	—	—	—
Consolidated net loss from discontinued operations	—	(699)	(1,115)	(4,474)
Consolidated net loss	(3,065)	(4,544)	(30,261)	(17,803)
Net income attributable to noncontrolling interests	(122)	(153)	(382)	(329)
Net loss attributable to the Company	$ (3,187)	$ (4,697)	$ (30,643)	$ (18,132)
Consolidated net loss from continuing operations	$ (3,065)	$ (3,845)	$ (29,146)	$ (13,329)
Other comprehensive income (loss) from continuing operations	(3)	31	(205)	(120)
Comprehensive loss from continuing operations	(3,068)	(3,814)	(29,351)	(13,449)
Consolidated net loss from discontinued operations	—	(699)	(1,115)	(4,474)
Other comprehensive loss from discontinued operations	—	—	—	—
Comprehensive loss from discontinued operations	—	(699)	(1,115)	(4,474)
Comprehensive loss	$ (3,068)	$ (4,513)	$ (30,466)	$ (17,923)
Loss per share				
Loss per share from continuing operations	$ (0.11)	$ (0.16)	$ (1.08)	$ (0.65)
Loss per share from discontinued operations	—	(0.04)	(0.04)	(0.22)
Total basic and diluted net loss per share	$ (0.11)	$ (0.20)	$ (1.12)	$ (0.87)
Weighted-average number of shares outstanding during the period:				
Basic	28,352,284	24,144,002	27,268,792	20,852,034
Diluted	28,352,284	24,144,002	27,268,792	20,852,034
***Includes stock-based compensation expense, as follows:**				
General and administrative	$ 194	$ 662	$ 765	$ 1,752
Discontinued operations	—	44	—	427
Total stock-based compensation expense	$ 194	$ 706	$ 765	$ 2,179

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

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

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Total Company equity	Non-controlling interest	Total equity
December 31, 2017	$ 4	$ 265	$ 290,396	$ (249,708)	$ (74)	$ 40,883	$ 4,956	$ 45,839
Vesting of restricted stock units ("RSUs")	—	6	(6)	—	—	—	—	—
Issuance of equity warrants	—	—	64	—	—	64	—	64
Issuance of common stock for repayment of debt and interest	—	48	770	—	—	818	—	818
Stock-based compensation	—	—	765	—	—	765	—	765
Net loss for the period	—	—	—	(30,643)	—	(30,643)	382	(30,261)
Foreign currency translation	—	—	—	—	(205)	(205)	—	(205)
Contributions from noncontrolling interests	—	—	—	—	—	—	119	119
Distributions to noncontrolling interests	—	—	—	—	—	—	(1,384)	(1,384)
September 30, 2018	$ 4	$ 319	$ 291,989	$ (280,351)	$ (279)	$ 11,682	$ 4,073	$ 15,755

	Preferred stock	Common stock	Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Total Company equity	Non-controlling interest	Total equity
December 31, 2016	$ 5	$ 183	$ 280,221	$ (220,868)	$ (13)	$ 59,528	$ 4,641	$ 64,169
Issuance of common stock for services	—	—	20	—	—	20	—	20
Issuance of common stock for acquisition of Excalibur	—	9	1,800	—	—	1,809	—	1,809
Net proceeds from sale and issuance of shares of common stock in public offering	—	69	6,515	—	—	6,584	—	6,584
Decrease in shares of preferred stock issued to XpresSpa sellers	—	—	(908)	—	—	(908)	—	(908)
Conversion of preferred stock to common stock	(1)	4	(4)	—	—	(1)	—	(1)
Stock-based compensation	—	—	2,179	—	—	2,179	—	2,179
Net loss for the period	—	—	—	(18,132)	—	(18,132)	329	(17,803)
Foreign currency translation	—	—	—	—	(120)	(120)	—	(120)
Contributions from noncontrolling interests	—	—	—	—	—	—	272	272
Distributions to noncontrolling interests	—	—	—	—	—	—	(365)	(365)
September 30, 2017	$ 4	$ 265	$ 289,823	$ (239,000)	$ (133)	$ 50,959	$ 4,877	$ 55,836

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

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

	Nine months ended September 30,	
	2018	**2017**
Cash flows from operating activities		
Consolidated net loss	$ (30,261)	$ (17,803)
Consolidated net loss from discontinued operations	(1,115)	(4,474)
Consolidated net loss from continuing operations	(29,146)	(13,329)
Adjustments to reconcile consolidated net loss from continuing operations to net cash used in operating activities:		
Items not affecting cash flows		
Depreciation and amortization	5,375	6,379
Goodwill impairment	19,630	—
Stock-based compensation	765	1,752
Issuance of shares of common stock	—	1,829
Issuance of shares of common stock for repayment of debt and interest	169	—
Issuance of equity warrants	64	—
Gain on disposal of asset	—	(148)
Amortization of debt discount and debt issuance costs	589	—
Change in fair value of derivative warrant liabilities – May 2015	(33)	(207)
Change in fair value of derivative warrant liabilities – May 2018	(1,508)	—
Conversion of shares of preferred stock to shares of common stock	—	(1)
Contingent liability assumed from acquisition	—	(316)
Gain on the sale of patents	(450)	—
Changes in assets and liabilities		
Decrease in inventory	357	967
Decrease (increase) in other current assets and other assets	(741)	1,229
Decrease in accounts payable, accrued expenses and other current liabilities	(1,095)	(4,189)
Increase in other liabilities	(105)	791
Net cash used in operating activities – continuing operations	(6,129)	(5,243)
Net cash provided by (used in) operating activities – discontinued operations	1,501	(5,716)
Net cash used in operating activities	(4,628)	(10,959)
Cash flows from investing activities		
Acquisition of property and equipment	(2,682)	(1,970)
Acquisition of software	(143)	(331)
Proceeds from the sale of patents	250	150
Cash received from note receivable	800	—
Net cash used in investing activities – continuing operations	(1,775)	(2,151)
Net cash used in investing activities – discontinued operations	—	(738)
Net cash used in investing activities	(1,775)	(2,889)
Cash flows provided by (used in) financing activities		
Proceeds from convertible notes and warrants	4,350	—
Debt issuance costs	(320)	—
Net proceeds from sale and issuance of shares of common stock in public offering	—	6,584
Contributions from noncontrolling interests	119	272
Distributions to noncontrolling interests	(1,384)	(365)
Net cash provided by (used in) financing activities – continuing operations	2,765	6,491
Net cash used in financing activities – discontinued operations	—	(361)
Net cash provided by (used in) financing activities	2,765	6,130
Effect of exchange rate changes and foreign currency translation	(205)	(120)
Decrease in cash and cash equivalents	(3,843)	(7,838)
Cash and cash equivalents at beginning of period	6,368	17,910
Cash and cash equivalents at end of period	$ 2,525	$ 10,072
Cash paid during the period for		
Interest	$ 580	$ 580
Non-cash investing and financing transactions		
Non-cash acquisition of cost method investment	$ 2,075	$ —
Debt discount related to issuance of convertible notes	$ 1,962	$ —
Issuance of common stock to repay $649 of debt and interest	$ 818	$ —

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

Note 1. General

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

As a result of the transition to a pure-play health and wellness services company, the Company currently has one operating segment that is also its sole reporting unit, XpresSpa, a leading airport retailer of spa services. XpresSpa is a well-recognized airport spa brand with 57 locations, consisting of 52 domestic and 5 international locations as of September 30, 2018. XpresSpa offers travelers premium spa services, including massage, nail and skin care, as well as spa and travel products.

In October 2017, the Company completed the sale of FLI Charge, Inc. ("FLI Charge") and, in March 2018, the Company completed the sale of Group Mobile Int'l LLC ("Group Mobile"). These two entities formerly comprised the Company's technology operating segment, which was discontinued following the disposition of Group Mobile. The results of operations for FLI Charge and Group Mobile are presented in the condensed consolidated statements of operations and comprehensive loss as consolidated net loss from discontinued operations. The carrying amounts of assets and liabilities belonging to Group Mobile are presented in the condensed consolidated balance sheets as assets held for disposal and liabilities held for disposal, respectively, as of September 30, 2018 and December 31, 2017.

The Company owns certain patent portfolios, which it looks to monetize through sales and licensing agreements. During the nine-month period ended September 30, 2018, the Company determined that its former intellectual property operating segment would no longer be an area of focus and, as such, will no longer operate as a separate operating segment, as it is not expected to generate any material revenues or operating costs.

On May 15, 2018, the Company entered into a securities purchase agreement (the "Securities Purchase Agreement") with certain institutional investors (the "Investors"), pursuant to which the Company agreed to sell up to (i) an aggregate principal amount of $4,438 in 5% Secured Convertible Notes due November 16, 2019, which included $88 issued to Palladium Capital Advisors as Placement Agent (the "Convertible Notes"), convertible into shares of the Company's common stock, par value $0.01 per share (the "Common Stock") at a conversion price of $0.62 per share, (ii) Class A Warrants (the "Class A Warrants") to purchase 7,157,259 shares of Common Stock at an exercise price of $0.62 per share and (iii) Class B Warrants (the "Class B Warrants," and together with the Class A Warrants, the "Warrants") to purchase 3,578,630 shares of Common Stock at an exercise price of $0.62 per share. The Convertible Notes bear interest at a rate of 5% per annum. The Convertible Notes are senior secured obligations of the Company and are secured by certain of its personal property. Unless earlier converted or redeemed, the Convertible Notes will mature on November 16, 2019. The transaction closed on May 17, 2018, at which time the Company received $4,350 in gross proceeds from the Investors.

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

As of September 30, 2018, the Company's current assets were $4,027, which included cash and cash equivalents of $2,525. The Company's current liabilities were $9,291 as of September 30, 2018, which included $1,610 of convertible notes classified as short-term for which principal repayments may be made in Common Stock at the Company's election. In addition, included in total current liabilities is approximately $1,661 which relates to obligations that will not settle in cash, and an additional $465 of liabilities that are not expected to settle in the next twelve months.

On November 12, 2018, the Company entered into a Product Sale and Marketing Agreement (the "Collaboration Agreement") with Calm.com, Inc. ("Calm") primarily related to the display, marketing, promotion, offer for sale and sale of Calm's products in each of the Company's branded stores throughout the United States. The Collaboration Agreement resulted in an initial investment by Calm of $2,000 in Series E Preferred Stock, convertible into shares of Common Stock at $0.62 per share, which was received upon the closing of the transaction.

The Company's management believes that its current cash balance, cash provided from the Calm Collaboration Agreement, cash to be provided by future operating activities, and cash proceeds from the anticipated liquidation of certain investments, will be sufficient to fund its planned operations and pay its liabilities as they become due for at least the next twelve months following the filing date of these financial statements. At the Company's election, principal repayments of the Convertible Notes may be made in cash or, subject to certain conditions, in registered shares of Common Stock. In addition, the Company has access to additional sources of financing and may attempt to renegotiate terms of various contracts.

Note 2. Accounting and Reporting Policies

(a) Basis of presentation and principles of consolidation

The accompanying interim condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America ("GAAP") for interim financial information and the instructions to Rule 10-01 of Regulation S-X, and should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2017. The condensed consolidated financial statements include the accounts of the Company, all entities that are wholly-owned by the Company, and all entities in which the Company has a controlling financial interest. All adjustments that, in the opinion of management, are necessary for a fair presentation for the periods presented have been reflected by the Company. Such adjustments are of a normal, recurring nature. The results of operations for the three- and nine-month periods ended September 30, 2018 are not necessarily indicative of the results that may be expected for the entire fiscal year or for any other interim period. All significant intercompany balances and transactions have been eliminated in consolidation.

(b) Use of estimates

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

(c) Cash and cash equivalents

The Company maintains cash in checking accounts with financial institutions. The Company has established guidelines relating to diversification and maturities of its investments in order to minimize credit risk and maintain high liquidity of funds. Cash equivalents include amounts due from third-party financial institutions for credit and debit card transactions. These items typically settle in less than five days. As of September 30, 2018, the Company held significant portions of its cash balance in overseas accounts, totaling $1,081, which is not insured by the Federal Deposit Insurance Corporation ("FDIC"). If the Company were to distribute the amounts held overseas, the Company would need to follow an approval process as defined in its operating and partnership agreements, which may delay the availability of cash to the Company.

(d) Revenue recognition

The Company recognizes revenue from the sale of XpresSpa products and services at the point of sale, net of discounts and applicable sales taxes. Revenues from the XpresSpa wholesale and e-commerce businesses are recorded at the time goods are shipped. The Company excludes all sales taxes assessed to its customers. Sales taxes assessed on revenues are included in accounts payable, accrued expenses and other current liabilities in the condensed consolidated balance sheets until remitted to the state agencies.

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

(e) Cost of sales

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

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

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

(f) Investments

The Company accounts for its investments in other entities using the cost method of accounting when the Company has no substantial influence over, and the investment is less than 20% of, the investee entity. Under the cost method, the investment is recorded at cost, which approximates fair value, on the date of acquisition. The Company performs an assessment for impairment on at least an annual basis, or when there is an indication that cost exceeds fair value.

(g) Fair value measurements

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

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

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

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

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

(h) Recently issued accounting pronouncements

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

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

ASU No. 2016-02, Leases (Topic 842)
This standard provides new guidance related to accounting for leases and supersedes GAAP on lease accounting with the intent to increase transparency. This standard requires operating leases to be recorded on the balance sheet as assets and liabilities and requires disclosure of key information about leasing arrangements. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the statement of operations and comprehensive loss. The adoption will require a modified retrospective approach as of the beginning of the earliest period presented. The new standard is effective for the fiscal year beginning after December 15, 2018, with early adoption permitted. The Company is currently in the process of evaluating the impact of the adoption on its condensed consolidated financial statements, and expects that it will result in a significant increase in its long-term assets and liabilities.

ASU No. 2017-04, Intangibles – Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment
This standard provides new guidance to eliminate the requirement to calculate the implied fair value of goodwill, or the Step 2 test, to measure a goodwill impairment charge. Instead, entities will record an impairment charge based on the excess of a reporting unit's carrying amount over its fair value. The loss recognized should not exceed the total goodwill allocated to the reporting unit. The new standard is effective for the fiscal year beginning after December 15, 2019, with early adoption permitted. The Company early adopted this standard effective January 1, 2018. Adoption of this ASU did not have a material impact on the Company's condensed consolidated financial statements.

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

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

ASU No. 2018-11, Leases (Topic 842): Targeted Improvements
This standard provides an optional transition method to adopt the new leases standard in Topic 842 which permits the recognition of a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. The amendments do not change the existing disclosure requirements in Topic 840. The new standard is effective for the fiscal year beginning after December 15, 2018. The Company is currently in the process of evaluating the impact of the adoption on its condensed consolidated financial statements, and expects that it will result in an adjustment to the opening balance of retained earnings in the period of adoption.

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

(i) Reclassification

Certain balances have been reclassified to conform to presentation requirements, including the presentation of discontinued operations and the consistent presentation of the allocation of cost of sales and general and administrative expenses between store locations and corporate in the condensed consolidated statements of operations and comprehensive loss.

Note 3. Net Loss per Share of Common Stock

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

	Three months ended September 30,		Nine months ended September 30,	
	2018	**2017**	**2018**	**2017**
Basic and diluted numerator:				
Net loss from continuing operations attributable to shares of common stock	$ (3,187)	$ (3,998)	$ (29,528)	$ (13,658)
Net loss from discontinued operations attributable to shares of common stock	-	(699)	(1,115)	(4,474)
Net loss attributable to the Company	$ (3,187)	$ (4,697)	$ (30,643)	$ (18,132)
Basic and diluted denominator:				
Basic shares of common stock outstanding	28,352,284	24,144,002	27,268,792	20,852,034
Basic loss per share of common stock from continuing operations	$ (0.11)	$ (0.16)	$ (1.08)	$ (0.65)
Basic loss per share of common stock from discontinued operations	-	(0.04)	(0.04)	(0.22)
Basic and diluted net loss per share of common stock	$ (0.11)	$ (0.20)	$ (1.12)	$ (0.87)
Net loss per share data presented excludes from the calculation of diluted net loss the following potentially dilutive securities, as they had an anti-dilutive impact:				
Both vested and unvested options to purchase an equal number of shares of common stock of the Company	2,285,000	4,876,899	2,285,000	4,876,899
Unvested RSUs to issue an equal number of shares of common stock of the Company	455,000	365,565	455,000	365,565
Warrants to purchase an equal number of shares of common stock of the Company	14,073,390	3,087,500	14,073,390	3,087,500
Preferred stock on an as converted basis	3,364,328	3,439,587	3,364,328	3,620,626
Convertible notes on an as converted basis	4,350,000	—	4,350,000	—
Total number of potentially dilutive instruments, excluded from the calculation of net loss per share	24,527,718	11,769,551	24,527,718	11,950,590

Note 4. Goodwill

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

The Company's market capitalization is sensitive to the volatility of its stock price. On January 2, 2018, the first trading day of fiscal year 2018, the Company's stock price opened at $1.36 and closed at $1.45. The closing price of the Company's stock on March 29, 2018, the last trading day of the first quarter of fiscal 2018, was $0.72. The average closing stock price of the Company from January 2, 2018 through March 29, 2018 was approximately $1.02, ranging from $0.71 to $1.80 during that period.

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

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

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

Based on the estimated fair value of goodwill, the Company recorded an impairment charge of $19,630, to reduce the carrying value of goodwill to its fair value, which was determined to be zero. This impairment charge is included in goodwill impairment in the condensed consolidated statements of operations and comprehensive loss for the nine-month period ended September 30, 2018.

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

Note 5. Other Assets

Other assets in the condensed consolidated balance sheets are comprised of the following as of September 30, 2018 and December 31, 2017:

	September 30, 2018	December 31, 2017
Cost method investments	$ 2,502	$ 834
Lease deposits	854	852
Other assets	$ 3,356	$ 1,686

As of September 30, 2018, the Company's other assets included:

- $1,625 cost method investment in Route1 Inc. ("Route1"), which the Company received from the disposition of Group Mobile in March 2018;
- $787 cost method investment in InfoMedia Services Limited ("InfoMedia"), which the Company acquired in 2014;
- $43 cost method investment in Marathon Patent Group, Inc. ("Marathon"), which the Company acquired in January 2018 with an acquisition date fair value of $450. Based on the Company's evaluation of the investment, it was determined that certain unrealized losses represented an other-than-temporary impairment as of September 30, 2018 and the Company recognized an impairment charge of $26 and $133 for the three- and nine-month periods ended September 30, 2018, equal to the excess of carrying value over fair value. During the three-month period ended September 30, 2018, the Company sold 200,046 shares of Marathon common stock, with a carrying value of $274, for net proceeds of $193;
- $47 cost method investment in FLI Charge, which the Company received from the disposition of FLI Charge in October 2017; and
- $854 deposits made pursuant to various lease agreements, which will be returned to the Company at the end of the leases.

Note 6. Segment Information

As a result of the Company's transition to a pure-play health and wellness services company, it currently has one operating segment that is also its sole reporting unit, XpresSpa.

The Company currently operates in two geographical segments: the United States and all other countries. The following table represents the geographical revenue and segment operating loss for the three- and nine-month periods ended September 30, 2018 and 2017 and total asset information as of September 30, 2018 and December 31, 2017. There were no concentrations of geographical revenue, segment operating loss or total assets related to any single foreign country that were material to the Company's condensed consolidated financial statements.

	Three months ended September 30,		Nine months ended September 30,	
	2018	2017	2018	2017
Revenue				
United States	$ 11,516	$ 11,349	$ 34,513	$ 32,982
All other countries	1,406	1,503	4,047	3,881
Total revenue	12,922	12,852	38,560	36,863
Cost of sales				
United States	9,056	9,637	27,524	27,588
All other countries	929	836	2,597	2,338
Total cost of sales	9,985	10,473	30,121	29,926
Segment operating income (loss)				
United States	(3,095)	(4,052)	(29,470)	(13,704)
All other countries	210	529	461	1,225
Operating loss from continuing operations	(2,885)	(3,523)	(29,009)	(12,479)
Other non-operating expense, net	(246)	(265)	(335)	(566)
Loss from continuing operations before income taxes	$ (3,131)	$ (3,788)	$ (29,344)	$ (13,045)

	September 30, 2018	December 31, 2017
Assets		
United States	$ 29,878	$ 55,152
All other countries	2,677	3,642
Assets held for disposal	109	6,446
Total assets	$ 32,664	$ 65,240

Note 7. Fair Value Measurements

Derivative Warrant Liabilities

The following table presents the placement in the fair value hierarchy of derivative warrant liabilities measured at fair value on a recurring basis as of September 30, 2018, May 17, 2018 and December 31, 2017:

May 2015 Warrants

		Fair value measurement at reporting date using		
	Balance	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
September 30, 2018:	$ 1	$ —	$ —	$ 1
December 31, 2017:	$ 34	$ —	$ —	$ 34

May 2018 Warrants

		Fair value measurement at reporting date using		
	Balance	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
September 30,2018:				
A Warrants	$ 455	$ —	$ —	$ 455
B Warrants	—	—	—	—
Total	$ 455	$ —	$ —	$ 455
May 17, 2018:				
A Warrants	$ 1,827	$ —	$ —	$ 1,827
B Warrants	135	—	—	135
Total	$ 1,962	$ —	$ —	$ 1,962

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

In addition to the above, the Company's financial instruments as of September 30, 2018 and December 31, 2017 consisted of cash and cash equivalents, trade and loan receivables, inventory, accounts payable and other current liabilities. The carrying amounts of all the aforementioned financial instruments approximate fair value because of the short-term maturities of these instruments.

The following table summarizes the changes in the Company's derivative warrant liabilities measured at fair value using significant unobservable inputs (Level 3) during the three- and nine-month periods ended September 30, 2018:

December 31, 2017	$ 34
Issuance of warrants May 17, 2018	1,962
Decrease in fair value of the derivative warrant liabilities	(1,541)
September 30, 2018	$ 455

Valuation processes for Level 3 Fair Value Measurements

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

May 2015 Warrants

September 30, 2018:

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities	Black-Scholes-Merton	Volatility	70.37%
		Risk-free interest rate	2.72%
		Expected term, in years	1.59
		Dividend yield	0.00%

December 31, 2017:

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

May 2018 Warrants

September 30, 2018:

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities – A Warrants	Black-Scholes-Merton	Volatility	70.93%
		Risk-free interest rate	2.96%
		Expected term, in years	4.63
		Dividend yield	0.00%

Description	Valuation technique	Unobservable inputs	Range
Derivative warrant liabilities – B Warrants	Black-Scholes-Merton	Volatility	113.31%
		Risk-free interest rate	1.91%
		Expected term, in years	0.12
		Dividend yield	0.00%

May 17, 2018:

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

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

Sensitivity of Level 3 measurements to changes in significant unobservable inputs

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

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

Marathon Common Stock

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

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

		Fair value measurement at reporting date using		
	Balance	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
January 11, 2018	$ 450	$ —	$ 450	$ —
September 30, 2018	$ 43	$ 43	$ —	$ —

The fair value of the Marathon Common Stock was estimated by multiplying the number of shares as they become tradeable by the price per share as of the Transaction Date, information that falls within Level 1 of the fair value hierarchy, quoted prices in active markets for identical assets; however, due to the fact that the Marathon Common Stock was restricted during the Lockup Period, the Company applied a discount on the lack of marketability to estimate the fair value at the measurement date, which is a significant other observable input resulting in placement in Level 2 of the fair value hierarchy. The fair value of the consideration as of the Transaction Date was determined to be $450. Based on the Company's evaluation of the investment, it was determined that certain unrealized losses represented an other-than-temporary impairment as of September 30, 2018 and the Company recognized an impairment charge of $26 and $133 for the three and nine months ended September 30, 2018, equal to the excess of carrying value over fair value. The fair value of the remaining Marathon Common Stock held as of September 30, 2018 was determined to be $43, which is included in other assets in the condensed consolidated balance sheet as of September 30, 2018.

On July 11, 2018, the Lockup Period concluded and the Company was permitted to begin trading the Marathon Common Stock, subject to a leak-out provision whereby the shares were released from lockup in equal increments over a twenty-day period. As of September 30, 2018, the remaining 49,954 shares of Marathon Common Stock were no longer restricted pursuant to the Lockup Period and leak-out provision, and the Company determined that the investments are classified within Level 1 of the fair value hierarchy.

During the three-month period ended September 30, 2018, the Company sold 200,046 shares of Marathon common stock, with a carrying value of $274, for net proceeds of $193.

The following table summarizes the changes in the Company's investment in Marathon Common Stock, measured at fair value using significant other observable inputs (Level 2) as of Transaction Date and measured at fair value using quoted prices in active markets for identical assets (Level 1) during the three- and nine-month periods ended September 30, 2018:

January 11, 2018	$ 450
Carrying value of Marathon Common Stock sold	(274)
Decrease in fair value of the Marathon Common Stock	(133)
September 30, 2018	$ 43

Other Fair Value Measurements

The Company is also required to measure the fair value of the contingent consideration it assumed following the acquisition of Excalibur Integrated Systems, Inc. ("Excalibur") on February 2, 2017 on a recurring basis. The Company determined that there was no change in the fair value of the contingent consideration of $316 between December 31, 2017 and September 30, 2018. Although the Company disposed of Excalibur as part of the Group Mobile disposition, the contingent consideration remained due to the remnant of the earn-out provision due to the former stockholders of Excalibur, which is what first led to the recognition of a contingent consideration upon the acquisition of Excalibur. The contingent consideration is included in other liabilities in the condensed consolidated balance sheets.

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

Note 8. Stock-Based Compensation

As of September 30, 2018, 3,358,470 shares of the Company's Common Stock were available for future grants under the Company's 2012 Employee, Director and Consultant Equity Incentive Plan. Total stock-based compensation expense for the three-month periods ended September 30, 2018 and 2017 was $194 and $706, respectively, the latter of which included stock-based compensation expense of $44 included in discontinued operations. Total stock-based compensation expense for the nine-month periods ended September 30, 2018 and 2017 was $765 and $2,179, respectively, the latter of which included stock-based compensation expense of $427 included in discontinued operations.

The following table summarizes the RSUs granted to employees and consultants during the nine-month period ended September 30, 2018.

Grant date	No. of RSUs	Fair market value at grant date	Vesting term
February 28, 2018	53,408	$ 0.94	Vesting immediately upon grant
April 19, 2018	150,000	$ 0.60	Vesting immediately upon grant
May 15, 2018	465,000	$ 0.60	Over one year, vesting on one-year anniversary of grant date

No options were granted during the nine-month period ended September 30, 2018.

The activity related to RSUs and stock options during the nine-month period ended September 30, 2018 consisted of the following:

	RSUs		Options			
	No. of RSUs	Weighted average grant date fair value	No. of options	Weighted average exercise price	Exercise price range	Weighted average grant date fair value
Outstanding as of January 1, 2018	365,565	$ 2.12	4,317,942	$ 5.67	$ 1.10 – 41.00	$ 3.86
Granted	668,408	$ 0.63	—	—	—	—
Vested/Exercised	(568,973)	$ 1.61	—	—	—	—
Forfeited	(10,000)	$ 0.60	(1,980,625)	$ 6.17	$ 1.55 – 37.20	$ 4.11
Expired	—	—	(52,317)	$ 16.24	$ 9.60 – 16.50	$ 9.71
Outstanding as of September 30, 2018	455,000	$ 0.60	2,285,000	$ 4.99	$ 1.10 – 41.00	$ 3.12
Exercisable as of September 30, 2018	—	—	1,905,834	$ 5.59	$ 1.10 – 41.00	$ 3.53

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

Note 9. Debt and Convertible Notes

Debt

On April 22, 2015, prior to the acquisition of XpresSpa, XpresSpa entered into a credit agreement and secured promissory note (the “Debt”) with Rockmore Investment Master Fund Ltd. (“Rockmore”), a related party, which was amended on August 8, 2016 in connection with the Company’s acquisition of XpresSpa. Rockmore is an investment entity controlled by the Company’s Chairman of the Board of Directors, Bruce T. Bernstein. The Debt had an outstanding balance of $6,500 as of September 30, 2018 and December 31, 2017, which is included in long-term liabilities in the condensed consolidated balance sheets. During the nine-month period ended September 30, 2018, XpresSpa paid $580 of interest and recorded $548 of interest expense related to the debt.

On May 14, 2018, the Company and Rockmore agreed to extend the maturity date of the Debt from May 1, 2019 to December 31, 2019. No other material terms of the Debt were modified. As consideration for the agreement to extend the maturity date of the Debt and the consent to the Securities Purchase Agreement, the Company issued to Rockmore 250,000 Class A Warrants. These Class A Warrants were issued on the same terms and conditions as the Class A Warrants issued under the Securities Purchase Agreement. The warrants issued to Rockmore were classified as equity warrants in the condensed consolidated balance sheet as of September 30, 2018.

Convertible Notes

On May 15, 2018, the Company entered into the Securities Purchase Agreement with the Investors, pursuant to which the Company agreed to sell up to (i) an aggregate principal amount of $4,438 in the Convertible Notes, which includes $88 issued to Palladium Capital Advisors as Placement Agent, convertible into Common Stock at a conversion price of $0.62 per share, (ii) Class A Warrants to purchase 7,157,259 shares of Common Stock at an exercise price of $0.62 per share and (iii) Class B Warrants to purchase up to 3,578,630 shares of Common Stock at an exercise price of $0.62 per share. The Convertible Notes bear interest at a rate of 5% per annum. The Convertible Notes are senior secured obligations of the Company and are secured by certain of its personal property. Unless earlier converted or redeemed, the Convertible Notes will mature on November 16, 2019. The transaction closed on May 17, 2018.

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

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

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

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

The table below summarizes changes in the book value of the Convertible Notes from May 17, 2018 to September 30, 2018:

Book value as of May 17, 2018	$	2,388
Debt issuance costs		(320)
Book value as of May 17, 2018		2,068
Debt repayments in the period		(649)
Amortization of debt discount and debt issuance costs, included in interest expense		589
Book value as of September 30, 2018	$	2,008

The debt discount and debt issuance costs will be amortized on a straight-line basis over the remaining term of the Convertible Notes. During the three- and nine-month periods ended September 30, 2018, the Company recorded $394 and $589 of amortization of debt discount and debt issuance costs, which was included in interest expense for the three- and nine-month periods ended September 30, 2018. Additionally, for the three- and nine-month periods ended September 30, 2018, the Company recorded $48 and $75 of interest expense related to the Convertible Notes, which was included in interest expense.

Note 10. Related Party Transactions

On April 14, 2018, the Company entered into a consulting agreement with an employee of Mistral Equity Partners, which is a significant shareholder of the Company and whose Chief Executive Officer is a member of the Board of Directors of the Company, to consult on certain business-related matters. The total consideration is approximately $10 per month through December 31, 2018. The agreement may be terminated by either party at any time upon delivery of written notice. Pursuant to the agreement, the Company recorded consulting expense of $30 and $55 for the three- and nine-month periods ended September 30, 2018, respectively.

Note 11. Discontinued Operations and Assets and Liabilities Held for Disposal

FLI Charge

On October 20, 2017, the Company sold FLI Charge to a group of private investors and FLI Charge management, to own and operate FLI Charge. Post-closing, the Company does not provide any continued management or financing support to FLI Charge.

Group Mobile

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

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

- 25,000,000 shares of Route1 Common Stock (the “Route1 Common Stock”);
- warrants to purchase 30,000,000 shares of Route1 Common Stock, which will feature an exercise price of CAD 5 cents per share of Common Stock and will be exercisable for a three-year period; and
- certain other payments over the three-year period pursuant to an earn-out provision in the Group Mobile Purchase Agreement.

The Company retained certain inventory with a value of $555 to be disposed of separately from the transaction with Route1 in the first half of 2018. Of this amount, $110 was sold as of June 30, 2018. The remaining inventory excluded from the transaction was subsequently determined to be obsolete and unsalable and was fully written off as of June 30, 2018. Assets held for disposal includes $109 of accounts receivable, net of allowance, associated with the sale of the inventory excluded from the transaction with Route1.

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

The total consideration of the Disposition is recognized as a cost method investment and, as such, must be measured at cost on the date of acquisition, which, as of the Closing Date, approximates fair value. The fair value of the total consideration as of the Closing Date was determined to be $1,625, which is less than the carrying value of the asset, and is included in other assets in the condensed consolidated balance sheet as of September 30, 2018. This resulted in a loss on disposal of $301, which is included in consolidated net loss from discontinued operations in the condensed consolidated statement of operations and comprehensive loss for the nine-month period ended September 30, 2018.

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

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

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

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

The value of the Route1 Common Stock was classified within Level 2 of the fair value hierarchy because, although quoted prices in active markets for identical assets were used, which is a Level 1 attribute, the Company applied a discount on the lack of marketability to estimate the fair value due to the fact that the Route1 Common Stock will be restricted for different periods, which is a significant other observable input. The value of the warrants and earn-out provision were classified within Level 3 of the fair value hierarchy because they were valued using the Black-Scholes-Merton model and a Monte-Carlo simulation analysis, respectively, each of which utilizes significant inputs that are unobservable in the market.

The Company's fair value measurements are evaluated by management to ensure that they are consistent with expectations of management based upon the sensitivity and nature of the inputs.

Operating Results and Assets and Liabilities Held for Sale

The following table presents the components of the consolidated net loss from discontinued operations, as presented in the condensed consolidated statements of operations and comprehensive loss, for the three- and nine-month periods ended September 30, 2018 for Group Mobile and September 30, 2017 for Group Mobile and FLI Charge:

	Three months ended September 30,		Nine months ended September 30,	
	2018	2017	2018	2017
Revenue	$ —	$ 4,889	$ 2,834	$ 11,883
Cost of sales	—	(3,918)	(2,305)	(9,603)
Depreciation and amortization	—	(196)	(131)	(568)
Impairment	—	—	—	(1,092)
General and administrative	—	(1,463)	(1,190)	(5,079)
Loss on disposal	—	—	(301)	—
Non-operating income (expense), net	—	(11)	(22)	(15)
Loss from discontinued operations before income taxes	—	(699)	(1,115)	(4,474)
Income tax benefit (expense)	—	—	—	—
Consolidated net loss from discontinued operations	$ —	$ (699)	$ (1,115)	$ (4,474)

In addition, the following table presents the carrying amounts of Group Mobile's major classes of assets and liabilities held for disposal as of September 30, 2018 and December 31, 2017, as presented in the condensed consolidated balance sheets:

	September 30, 2018	December 31, 2017
Cash	$ —	$ 150
Accounts receivable, net	109	2,920
Inventory	—	1,935
Other current assets	—	3
Property and equipment, net	—	874
Intangible assets, net	—	564
Assets held for disposal	$ 109	$ 6,446
Accounts payable, accrued expenses and other current liabilities	$ 40	$ 3,142
Deferred revenue	—	619
Liabilities held for disposal	$ 40	$ 3,761

Note 12. Income Taxes

The Company's provision for income taxes consists of federal, state, local, and foreign taxes in amounts necessary to align the Company's year-to-date provision for income taxes with the effective tax rate that the Company expects to achieve for the full year. Each quarter, the Company updates its estimate of the annual effective tax rate and records cumulative adjustments as deemed necessary. The income tax provisions for the nine-month period ended September 30, 2018 reflect an estimated global annual effective tax rate of approximately 0.44%.

As of September 30, 2018, deferred tax assets generated from the Company's activities in the United States were offset by a valuation allowance because realization depends on generating future taxable income, which, in the Company's estimation, is not more likely than not to be generated before such net operating loss carryforwards expire. Net operating losses generated for tax years beginning after December 31, 2017 do not expire. The Company expects its effective tax rate for its current fiscal year to be significantly lower than the statutory rate as a result of a full valuation allowance; therefore, any loss before income taxes does not generate a corresponding income tax benefit.

Income tax benefit for the nine-month period ended September 30, 2018 of $198 was attributable primarily to the reduction to the valuation allowance as a result of the Tax Cuts and Jobs Act's impact on the lives of net operating losses. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from current estimates. Although the Company has an immaterial amount of uncertain tax positions, the Company does not expect to record any additional material provisions for unrecognized tax benefits in the next year.

Note 13. Commitments and Contingencies

Litigation and legal proceedings

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

With respect to the Company's outstanding legal matters, based on its current knowledge, the Company's management believes that the amount or range of a potential loss will not, either individually or in the aggregate, have a material adverse effect on its business, consolidated financial position, results of operations or cash flows. However, the outcome of such legal matters is inherently unpredictable and subject to significant uncertainties. The Company evaluated the matters described below and assessed the probability and likelihood of the occurrence of liability. Based on management's estimates, the Company has accrued $290 for such potential losses, which is included in accounts payable, accrued expenses, and other current liabilities in the condensed consolidated balance sheet as of September 30, 2018.

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

Cordial

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

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

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

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

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

On March 30, 2018, Cordial filed a lawsuit against XpresSpa, a subsidiary of XpresSpa, and several additional parties in the Superior Court of Fulton County, Georgia, alleging the violation of Cordial's civil rights, tortious interference, breach of fiduciary duty, civil conspiracy, conversion, retaliation, and unjust enrichment. Cordial has threated to seek punitive damages, attorneys' fees and litigation expenses, accounting, indemnification, and declaratory judgment as to the status of the membership interests of XpresSpa and Cordial in the joint venture and Cordial's right to profit distributions and management fees from the joint venture. On May 3, 2018, the Court issued an order extending the time for the defendants to respond to Cordial's lawsuit until June 25, 2018. On May 4, 2018, the defendants moved the lawsuit to the United States District Court for the Northern District of Georgia. On June 5, 2018, the Court granted an extension of time for the defendants' response until August 17, 2018. On August 9, 2018, the Court granted an additional extension of time for the defendants' response until September 7, 2018, and thereafter provided another extension pending the Court's consideration of XpresSpa's Motion to Stay all action in the Georgia lawsuit, pending resolution of the New York lawsuit and the FAA action. On October 29, 2018, XpresSpa's Motion to Stay was denied. XpresSpa and other defendants are now preparing motions to dismiss the amended complaint, and such motions are due on November 20, 2018.

In re Chen et al.

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

Binn v. FORM Holdings Corp. et al.

On November 6, 2017, Moreton Binn and Marisol F, LLC, former stockholders of XpresSpa, filed a lawsuit against the Company and its directors in the United States District Court for the Southern District of New York. The lawsuit alleges violations of various sections of the Exchange Act, material omissions and misrepresentations (negligent and fraudulent), fraudulent omission, expropriation, breach of fiduciary duties, aiding and abetting, and unjust enrichment in the defendants' conduct related to the Company's acquisition of XpresSpa, and seeks rescission of the transaction, damages, equitable and injunctive relief, fees and costs, and various other relief. On January 17, 2018, the defendants filed a motion to dismiss the complaint. On February 7, 2018, the plaintiffs amended their complaint. On February 28, 2018, the defendants filed a motion to dismiss the amended complaint. On March 21, 2018, the plaintiffs filed an opposition to the motion to dismiss the amended complaint. On March 30, 2018, the defendants filed a reply in further support of the defendants' motion to dismiss the amended complaint. On August 7, 2018, the Court ruled on the defendants' motion to dismiss the amended complaint, dismissing eight of the plaintiffs' ten claims and denying the defendants' motion to dismiss with respect to the two remaining claims, related to the Exchange Act.

Route1

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

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

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

Intellectual Property

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

Note 14. Subsequent Events

Collaboration Agreement

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

The Collaboration Agreement shall remain in effect until July 31, 2019, unless terminated earlier in accordance with the Collaboration Agreement, and automatically renew for successive terms of six (6) months unless either party provides written notice of termination no later than thirty (30) days prior to any such automatic renewal of the Collaboration Agreement.

The foregoing description of the Collaboration Agreement is only a summary and is qualified in its entirety by reference to the Collaboration Agreement. The Company intends to file a copy of the Collaboration Agreement as exhibit to its Annual Report on Form 10-K for its fiscal year ending December 31, 2018, portions of which will be subject to a FOIA Confidential Treatment Request which will be submitted to the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended. The omitted material will be included in the request for confidential treatment.

Stock Purchase Agreement

In connection with the entry into the Collaboration Agreement, the Company entered into a stock purchase agreement (the "Purchase Agreement") with Calm, pursuant to which the Company issued to Calm an aggregate of 645,161 shares of the Company's newly designated Series E Convertible Preferred Stock, par value $0.01 per share (the "Series E Preferred Stock"), which is initially convertible into 3,225,806 shares of the Company's Common Stock, par value $0.01 per share (the "Common Stock") at a conversion price of $0.62 per share, subject to certain adjustments. The purchase price per share of the Series E Preferred Stock was $3.10 per share for gross proceeds to the Company of $2,000,000. In addition, on or before December 31, 2018 and subject to the satisfaction of the conditions under the Purchase Agreement, the Company shall sell, and Calm shall purchase, 322,581 additional shares of Series E Preferred Stock (the "Additional Series E Shares"), which will initially be convertible into 1,612,905 shares of the Company's Common Stock at a conversion price of $0.62 per share, subject to certain adjustments, for gross proceeds to the Company of $1,000,000, which sale of Additional Series E Shares shall be on the same terms and conditions as those contained in the Purchase Agreement.

Series E Preferred Stock

On November 12, 2018, the Company filed with the Secretary of State of the State of Delaware a Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock (the "Certificate of Designations"). Pursuant to the Certificate of Designations, the holders of the Series E Preferred Stock are entitled, among other things, to an aggregate initial liquidation preference of $2,000,000 ($3,000,000 if the Second Closing occurs) and the right to participate in any dividends and distributions paid to common stockholders on an as-converted basis. The Series E Preferred Stock will vote on an as-converted basis. The Series E Preferred Stock is convertible at any time and from time to time without the payment of additional consideration and has a stated value of $3.10 per share of Series E Preferred Stock. In the event of any liquidation or dissolution of the Company, the Series E Preferred Stock ranks 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.

Upon the occurrence of certain fundamental events, the holders of the Series E Preferred Stock will be able to require the Company to redeem the shares of Series E Preferred Stock at the greater of the liquidation preference and the amount per share as would have been payable had the shares of Series E Preferred Stock been converted into Common Stock.

Pursuant to the terms of the Certificate of Designations, on the seven (7) year anniversary of the initial issuance date of the shares of Series E Preferred Stock, the Company may repay each share of the Series E Preferred Stock, at its option, in cash, by delivery of Common Stock or through any combination thereof. Additionally, under certain conditions, the Company may have the right, but not the obligation to convert the outstanding shares of Series E Preferred Stock into Common Stock. If the Company elects to make a payment, or any portion thereof, in shares of Common Stock, the number of shares deliverable (the "Base Shares") will be based on the volume weighted average price (the "VWAP") per share of Common Stock for the thirty (30) trading days prior to the date of calculation (the "Base Price") plus an additional number of shares of Common Stock (the "Premium Shares"), calculated as follows: (i) if the Base Price is greater than $9.00, no Premium Shares shall be issued, (ii) if the Base Price is greater than $7.00 and equal to or less than $9.00, an additional number of shares equal to 5% of the Base Shares shall be issued, (iii) if the Base Price is greater than $6.00 and equal to or less than $7.00, an additional number of shares equal to 10% of the Base Shares shall be issued, (iv) if the Base Price is greater than $5.00 and equal to or less than $6.00, an additional number of shares equal to 20% of the Base Shares shall be issued and (v) if the Base Price is less than or equal to $5.00, an additional number of shares equal to 25% of the Base Shares shall be issued. Accordingly, if the volume weighted average price per share of Common Stock is below $9.00 per share at the time of repayment and the Company exercises the option to make such repayment in shares of Common Stock, a large number of shares of Common Stock may be issued to the holders of Series E Preferred Stock upon maturity, which may have a negative effect on the trading price of Common Stock. At the seven (7) year maturity date of the Series E Preferred Stock, the Company, at its election, may decide to issue shares of Common Stock based on the formula set forth above or to re-pay in cash all or any portion of the Series E Preferred Stock. However, in no event, shall the VWAP per share of Common Stock be determined to be less than $0.62.

In 2025, upon the maturity date of the Series E Preferred Stock, when determining whether to repay the Series E Preferred Stock in cash or shares of Common Stock, the Company expects to consider a number of factors, including its cash position, the price of the Common Stock and the Company's capital structure at such time. Because the Company does not have to make a determination as to which option to elect until 2025, it is impossible to predict whether it is more or less likely to repay in cash, stock or a portion of each.

In addition, the Series E Preferred Stock contains certain protective provisions that limit the Company's ability to make certain cash distributions or payment of any indebtedness without the written consent of the holders of a majority of the outstanding shares of Series E Preferred Stock.

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 E Preferred Stock sold and issued in connection with the Purchase Agreement are not 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.

Seniority to Series D Convertible Preferred Stock

In connection with the entry into the Purchase Agreement, a majority of the holders of the Company's Series D Convertible Preferred Stock (the "Series D Preferred Stock") agreed to waive the provisions of the Certificate of Designation of Preferences, Rights and Limitations of Series D Convertible Preferred Stock prohibiting any class of stock existing senior to the Series D Preferred Stock with respect to right of participation in any dividends and distributions. Upon the issuance of the issuance of the Series E Preferred Stock, the Series D Preferred Stock will rank junior to the Series E Preferred Stock with respect to the Series E Preferred Stock's initial liquidation preference and in right of participation in any dividends and distributions.

Certificate of Designation

On November 13, 2018, the Company filed the Certificate of Designations with the Secretary of State of the State of Delaware, establishing and designating the rights, powers and preferences of the Series E Preferred Stock. The Company designated up to 1,473,300 shares of Series E Preferred Stock.

The foregoing summaries of the Purchase Agreement and Certificate of Designations do not purport to be complete and are qualified in their entirety by reference to the Purchase Agreement and Certificate of Designations, which are attached hereto as Exhibits 10.1 and 3.1, respectively, to this Quarterly Report on Form 10-Q and are incorporated by reference herein.

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

This Quarterly Report on Form 10-Q contains "forward-looking statements" that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. The statements contained herein that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are often identified by the use of words such as, but not limited to, "anticipates," "believes," "can," "continues," "could," "estimates," "expects," "intends," "may," "will be," "plans," "projects," "seeks," "should," "targets," "will," "would," and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management based on information currently available to management. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed in the section titled "Risk Factors" included in our Annual Report on Form 10-K for the year ended December 31, 2017 filed on March 29, 2018, as subsequently amended on April 30, 2018 (the "2017 Annual Report") and this Quarterly Report on Form 10-Q and any future reports we file with the Securities and Exchange Commission ("SEC"). The forward-looking statements set forth herein speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements, except as required by law.

All references in this Quarterly Report on Form 10-Q to "we," "us" and "our" refer to XpresSpa Group, Inc., a Delaware corporation, and its condensed consolidated subsidiaries.

Overview

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

XpresSpa is a well-recognized airport spa brand with 57 locations, consisting of 52 domestic and 5 international locations as of September 30, 2018. It offers travelers premium spa services, including massage, nail and skin care, as well as spa and travel products. For the three- and nine-month periods ended September 30, 2018, approximately 80% and 83% of XpresSpa's total revenue was generated by services, primarily massage and nailcare, and 20% and 17% was generated by retail products, primarily travel accessories, respectively.

In October 2017, we completed the sale of FLI Charge, Inc. ("FLI Charge") and in March 2018, we completed the sale of Group Mobile Int'l LLC ("Group Mobile"). The results of operations for FLI Charge and Group Mobile are presented in the condensed consolidated statements of operations and comprehensive loss as consolidated net loss from discontinued operations. The carrying amounts of assets and liabilities belonging to Group Mobile are presented in the condensed consolidated balance sheets as assets held for disposal and liabilities held for disposal, respectively, as of September 30, 2018 and December 31, 2017.

We own certain patent portfolios, which we look to monetize through sales and licensing agreements.

Q3 2018 Adjusted EBITDA Loss

	Three months ended September 30,		Nine months ended September 30,	
	2018	2017	2018	2017
Products and services revenue	$ 12,922,000	$ 12,652,000	$ 37,760,000	$ 36,563,000
Cost of sales				
Labor	(5,997,000)	(7,086,000)	(18,697,000)	(18,178,000)
Occupancy	(1,996,000)	(1,950,000)	(6,216,000)	(5,704,000)
Products and other operating costs	(1,966,000)	(1,311,000)	(5,092,000)	(5,701,000)
Total cost of sales	(9,959,000)	(10,347,000)	(30,005,000)	(29,583,000)
Gross profit	2,963,000	2,305,000	7,755,000	6,980,000
Gross profit as a % of total revenue	22.9%	18.2%	20.5%	19.1%
Depreciation, amortization and impairment				
Depreciation	(1,195,000)	(1,117,000)	(3,474,000)	(4,604,000)
Amortization	(684,000)	(605,000)	(1,901,000)	(1,775,000)
Goodwill impairment	—	—	(19,630,000)	—
Total depreciation, amortization and impairment	(1,879,000)	(1,722,000)	(25,005,000)	(6,379,000)
Total general and administrative expense	(3,943,000)	(4,180,000)	(12,443,000)	(13,037,000)
Other operating revenue and expense				
Other operating revenue	—	200,000	800,000	300,000
Other operating expense	(26,000)	(126,000)	(116,000)	(343,000)
Total other operating revenue, net	(26,000)	74,000	684,000	(43,000)
Operating loss from continuing operations	(2,885,000)	(3,523,000)	(29,009,000)	(12,479,000)
Add:				
Depreciation and amortization	1,879,000	1,722,000	5,375,000	6,379,000
Goodwill impairment	—	—	19,630,000	—
Merger and acquisition, integration, and one-time costs	452,000	529,000	1,057,000	1,365,000
Stock-based compensation expense	194,000	662,000	765,000	1,752,000
Adjusted EBITDA loss	$ (360,000)	$ (610,000)	$ (2,182,000)	$ (2,983,000)

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

Adjusted EBITDA is a supplemental measure of financial performance that is not required by, or presented in accordance with, GAAP. Reconciliations of operating loss for the three- and nine-month periods ended September 30, 2018 and September 30, 2017 to Adjusted EBITDA loss are presented in the tables above.

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

Results of Operations

Three-month period ended September 30, 2018 compared to the three-month period ended September 30, 2017

Revenue

	Three months ended September 30,		
	2018	**2017**	**Change**
Revenue	$ 12,922,000	$ 12,852,000	$ 70,000

During the three-month period ended September 30, 2018, we recorded total revenue of $12,922,000, which represents an increase of $70,000 (or 0.5%) compared to the three-month period ended September 30, 2017. The increase in revenue was primarily attributable to the number of XpresSpa locations open during each of the three-month periods. There were 57 XpresSpa locations open as of September 30, 2018 compared to 51 locations open as of September 30, 2017. This increase was offset by a decrease in comparable store sales, which we define as current period sales from stores opened more than 12 months compared to those same stores' sales in the prior year period. This decrease was largely due to airline reconfigurations and enplanement changes in three of our key terminals, which had a direct impact on traffic and ultimately revenues.

Cost of sales

	Three months ended September 30,		
	2018	**2017**	**Change**
Cost of sales	$ 9,985,000	$ 10,473,000	$ (488,000)

During the three-month period ended September 30, 2018, we recorded total cost of sales of $9,985,000, which represents a decrease of $488,000 (or 4.7%) compared to the three-month period ended September 30, 2017. This is consistent with the initiatives taken to streamline processes and reduce store-level costs which included reduced warehousing and shipping charges as we completed the transition of inventory sourcing to our strategic partner.

Included in cost of sales for the three-month period ended September 30, 2017 were intellectual property costs of $126,000, which included legal and consulting costs. There were no costs associated with intellectual property for the three-month period ended September 30, 2018.

Depreciation and amortization

	Three months ended September 30,		
	2018	**2017**	**Change**
Depreciation and amortization	$ 1,879,000	$ 1,722,000	$ 157,000

During the three-month period ended September 30, 2018, depreciation and amortization expense totaled $1,879,000, which represents an increase of $157,000 (or 9.1%), compared to the depreciation and amortization expense recorded during the three-month period ended September 30, 2017. The increase in depreciation and amortization expense was primarily due to a larger asset base during the three-month period ended September 30, 2018 due to a higher store count during the period.

General and administrative

	Three months ended September 30,		
	2018	**2017**	**Change**
General and administrative	$ 3,943,000	$ 4,180,000	$ (237,000)

During the three-month period ended September 30, 2018, general and administrative expenses decreased by $237,000 (or 5.7%) compared to the three-month period ended September 30, 2017. This decrease was a result of streamlined processes at the corporate level to reduce administrative costs, as well as a reduction in stock-based compensation expense of $468,000 from $662,000 for the three-month period ended September 30, 2017 to $194,000 for the three-month period ended September 30, 2018. The overall decrease was partially offset by one-time professional fees of $348,000, and one-time project costs of $104,000 related to the buildout and implementation of a business analytics tool.

Non-operating expense, net

	Three months ended September 30,		
	2018	**2017**	**Change**
Non-operating expense, net	$ 246,000	$ 265,000	$ (19,000)

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

During the three-month period ended September 30, 2018, we recorded net non-operating expense of $246,000 compared to net non-operating expense of $265,000 recorded during the three-month period ended September 30, 2017.

For the three-month period ended September 30, 2018, we recorded interest expense of $183,000 related to the Debt with Rockmore, amortization of debt discount, debt issuance costs, and interest on the Convertible Notes of $440,000, and other non-operating expenses of $266,000, which includes $26,000 of loss on impairment related to the cost method investment in Marathon. These non-operating expenses were wholly offset by a gain of $643,000 on the revaluation of the derivative warrant liabilities that is reported as non-operating income.

For the three-month period ended September 30, 2017, we recorded interest expense of $183,000 related to the Debt and other non-operating expenses of $133,000. This non-operating expense was partially offset by a gain of $48,000 on the revaluation of the derivative warrant liabilities.

Nine-month period ended September 30, 2018 compared to the nine-month period ended September 30, 2017

Revenue

	Nine months ended September 30,		
	2018	**2017**	**Change**
Revenue	$ 38,560,000	$ 36,863,000	$ 1,697,000

During the nine-month period ended September 30, 2018, we recorded total revenue of $38,560,000, which represents an increase of $1,697,000 (or 4.6%) compared to the nine-month period ended September 30, 2017. The increase in revenue was mainly due to the opening of new XpresSpa locations during the fourth quarter of fiscal 2017 and the first three quarters of fiscal 2018, which resulted in a net increase of 6 new XpresSpa locations.

Additionally, during the nine-month period ended September 30, 2018, we sold certain of our patents for consideration which included $250,000 and 250,000 shares of common stock in Marathon Patent Group, Inc. that were fair valued at $450,000. Also, in each nine-month period ended September 30, 2018 and September 30, 2017, we entered into an executed confidential patent license agreement with a third-party for which we received a one-time lump sum payment of $100,000.

Cost of sales

	Nine months ended September 30,		
	2018	**2017**	**Change**
Cost of sales	$ 30,121,000	$ 29,926,000	$ 195,000

During the nine-month period ended September 30, 2018, we recorded total cost of sales of $30,121,000, which represents an increase of $195,000 (or 0.7%) compared to the nine-month period ended September 30, 2017. This is consistent with the increase in revenues, as we have experienced an increase in cost of sales associated with labor and occupancy due to the opening of new stores during the fourth quarter of 2017 and the first three quarters of fiscal 2018. As of September 30, 3018 we had 57 locations compared to 51 locations as of September 30, 2017.

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

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

Depreciation and amortization

	Nine months ended September 30,		
	2018	**2017**	**Change**
Depreciation and amortization	$ 5,375,000	$ 6,379,000	$ (1,004,000)

During the nine-month period ended September 30, 2018, depreciation and amortization expense totaled $5,375,000, which represents a decrease of $1,004,000 (or 15.7%), compared to the depreciation and amortization expense recorded during the nine-month period ended September 30, 2017. The decrease was primarily due to the disposal of certain property and equipment during the second quarter of 2017 related to the decision by management to perform a complete renovation of our flagship JFK location. Upon management's decision to complete the renovation, useful lives were revised to fully depreciate all remaining assets by the store close date. This resulted in an additional $1,100,000 of depreciation expense in the second quarter of 2017. This decrease was partially offset by depreciation expense related to the increase in the number of stores open during the nine-month period ended September 30, 2018 compared to the nine-month period ended September 30, 2017.

Goodwill impairment

	Nine months ended September 30,		
	2018	**2017**	**Change**
Goodwill impairment	$ 19,630,000	$ —	$ 19,630,000

During the nine-month period ended September 30, 2018, we recorded $19,630,000 of goodwill impairment expense. There was no goodwill impairment recorded during the nine-month period ended September 30, 2017.

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

During the first quarter of fiscal year 2018, our stock price declined from an opening price of $1.36 on January 2, 2018 to $0.72 on March 29, 2018. Subsequently, on April 19, 2018, we entered into a separation agreement with our Chief Executive Officer regarding his resignation as Chief Executive Officer and as our Director.

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

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

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

General and administrative

	Nine months ended September 30,		
	2018	2017	Change
General and administrative	$ 12,443,000	$ 13,037,000	$ (594,000)

During the nine-month period ended September 30, 2018, general and administrative expenses decreased by $594,000 (or 4.6%) compared to the nine-month period ended September 30, 2017. This decrease is a result of streamlined processes at the corporate level to reduce administrative costs, as well as a reduction in stock-based compensation expense of $987,000 from $1,752,000 for the nine-month period ended September 30, 2017 to $765,000 for the nine-month period ended September 30, 2018. The overall decrease in general and administrative expenses was partially offset by severance costs of $350,000, one-time professional fees of $348,000, and one-time project costs of $359,000 related to the buildout and implementation of a business analytics tool, which we do not expect to recur in future periods.

Non-operating expense, net

	Nine months ended September 30,		
	2018	2017	Change
Non-operating expense, net	$ 335,000	$ 566,000	$ (231,000)

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

During the nine-month period ended September 30, 2018, we recorded net non-operating expense of $335,000 compared to net non-operating expense of $566,000 recorded during the nine-month period ended September 30, 2017.

For the nine-month period ended September 30, 2018, we recorded interest expense of $548,000 related to the Debt with Rockmore, amortization of debt discount, debt issuance costs, and interest on the Convertible Notes of $663,000, and other non-operating expenses of $665,000, which includes $133,000 of loss on impairment related to the cost method investment in Marathon. These non-operating expenses were offset by a gain of $1,541,000 on the revaluation of the derivative warrant liabilities that is reported as non-operating income.

For the nine-month period ended September 30, 2017, we recorded interest expense of $550,000 related to the Debt and other non-operating expenses of $223,000. This non-operating expense was partially offset by a gain of $207,000 on the revaluation of the derivative warrant liabilities.

Liquidity and Capital Resources

Our primary liquidity and capital requirements are for new XpresSpa locations. As of September 30, 2018, we had cash and cash equivalents of $2,525,000. We hold significant portions of our cash balance in overseas accounts, totaling $1,081,000, which is not insured by the Federal Deposit Insurance Corporation (“FDIC”). If we were to distribute the amounts held overseas, we would need to follow an approval process as it is defined in our operating and partnership agreements, which may delay the availability of our cash to us.

During the nine-month period ended September 30, 2018, we incurred $2,825,000 of capital expenditures, paid $320,000 in debt issuance costs associated with the Convertible Notes, paid $738,000 of interest on the Debt and amortization of debt issuance costs related to the Convertible Notes, distributed $1,265,000 to noncontrolling interests and spent $4,180,000 on our operations. This was offset by the receipt of $250,000 from the sale of patents in January 2018 and the receipt of $800,000 from a note receivable that was paid in full in February 2018, as well as the receipt of $4,350,000 in gross proceeds from the issuance of Convertible Notes in May 2018. We expect to utilize our cash and cash equivalents, along with cash flows from operations, to provide capital to support the growth of our business, primarily through opening new XpresSpa locations, maintaining our existing XpresSpa locations and supporting corporate functions. As of September 30, 2018, we had approximately $2,525,000 of cash and cash equivalents, $1,393,000 of inventory and prepaid expenses and $109,000 of assets held for disposal, which amount to total current assets of $4,027,000. Our total current liabilities balance, which includes accounts payable, accrued expenses, and the current portion of Convertible Notes, was $9,291,000 as of September 30, 2018. Included in total current liabilities is $1,610,000 of convertible notes classified as short-term for which principal repayments may be made in shares of Common Stock at our election. In addition, included in total current liabilities is approximately $1,661,000 which relates to obligations that will not settle in cash, and an additional $465,000 of liabilities that are not expected to settle in the next twelve months.

On May 15, 2018, we entered into a securities purchase agreement (the "Securities Purchase Agreement") with certain institutional investors (the "Investors"), pursuant to which we agreed to sell up to (i) an aggregate principal amount of $4,438,000 in 5% Secured Convertible Notes due on November 16, 2019, which included $88,000 issued to Palladium Capital Advisors as Placement Agent (the "Convertible Notes"), convertible into shares of our common stock, par value $0.01 per share (the "Common Stock") at a conversion price of $0.62 per share, (ii) Class A Warrants (the "Class A Warrants") to purchase 7,157,259 shares of Common Stock at an exercise price of $0.62 per share and (iii) Class B Warrants (the "Class B Warrants," and together with the Class A Warrants, the "Warrants") to purchase 3,578,630 shares of Common Stock at an exercise price of $0.62 per share. The Convertible Notes bear interest at a rate of 5% per annum. The Convertible Notes are senior secured obligations of ours and are secured by certain of our personal property. Unless earlier converted or redeemed, the Convertible Notes will mature on November 16, 2019. The transaction closed on May 17, 2018, at which time we received $4,350,000 in gross proceeds from the Investors.

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

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

Our management believes that our current cash balance, cash to be provided by future operating activities, and cash proceeds from the anticipated liquidation of certain investments, will be sufficient to fund our planned operations and pay our liabilities as they become due for at least the next twelve months. At our election, principal repayments of the Convertible Notes may be made in cash or, subject to certain conditions, in registered shares of our common stock. In addition, we have access to additional sources of financing and may attempt to renegotiate terms of various contracts.

On November 12, 2018, we entered into a Product Sale and Marketing Agreement (the "Collaboration Agreement") with Calm.com, Inc. ("Calm") primarily related to the display, marketing, promotion, offer for sale and sale of Calm's products in each of our branded stores throughout the United States. The Collaboration Agreement resulted in an initial investment by Calm of $2,000,000 in Series E Preferred Stock, convertible into shares of Common Stock at $0.62 per share, which was received upon the closing of the transaction.

Off-Balance Sheet Arrangements

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

Critical Accounting Estimates

These condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements included in our Annual Report on Form 10-K filed with the SEC on March 29, 2018, as subsequently amended on April 30, 2018, which includes a description of our critical accounting policies that involve subjective and complex judgments that could potentially affect reported results. While there have been no material changes to our critical accounting policies as to the methodologies or assumptions we apply under them, we continue to monitor such methodologies and assumptions.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Not required as we are a smaller reporting company.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

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

As of September 30, 2018, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Principal Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on the foregoing, our Chief Executive Officer and Principal Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

Changes in Internal Control over Financial Reporting

There has been no change in our internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the quarter ended September 30, 2018 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings.

For information regarding legal proceedings, see Note 13 “Commitments and Contingencies” in our notes to the condensed consolidated financial statements included in “Item 1. Financial Statements.”

Item 1A. Risk Factors.

Other than as set forth below, there have been no material changes to the risk factors discussed in Item 1A. Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2017.

Our business and financial condition could be constrained by XpresSpa’s outstanding debt, and/or failure to make payments on XpresSpa’s outstanding debt.

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

Our business and financial condition could be constrained by our outstanding debt and/or failure to make payments on such outstanding debt.

We are obligated under the Convertible Notes issued to the Investors pursuant to the Securities Purchase Agreement, which collectively had an outstanding unamortized book balance of approximately $2,008,000 as of September 30, 2018, and a total fair value upon issuance of $4,350,000, with maturity dates of November 16, 2019 and which accrue interest at an annual rate of 5%. We are obligated to make periodic payments on such debt obligations to each debtholder; and we can elect to make such payments either in cash or in stock. In addition, we have granted a security interest to the Investors in all of our tangible and intangible personal property to secure our obligations under the Convertible Notes issued to the Investors pursuant to the Securities Purchase Agreement.

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

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Collaboration Agreement

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

The Collaboration Agreement shall remain in effect until July 31, 2019, unless terminated earlier in accordance with the Collaboration Agreement, and automatically renew for successive terms of six (6) months unless either party provides written notice of termination no later than thirty (30) days prior to any such automatic renewal of the Collaboration Agreement.

The foregoing description of the Collaboration Agreement is only a summary and is qualified in its entirety by reference to the Collaboration Agreement. The Company intends to file a copy of the Collaboration Agreement as exhibit to its Annual Report on Form 10-K for its fiscal year ending December 31, 2018, portions of which will be subject to a FOIA Confidential Treatment Request which will be submitted to the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended. The omitted material will be included in the request for confidential treatment.

Stock Purchase Agreement

In connection with the entry into the Collaboration Agreement, the Company entered into a stock purchase agreement (the "Purchase Agreement") with Calm, pursuant to which the Company issued to Calm an aggregate of 645,161 shares of the Company's newly designated Series E Convertible Preferred Stock, par value $0.01 per share (the "Series E Preferred Stock"), which is initially convertible into 3,225,806 shares of the Company's common stock, par value $0.01 per share (the "Common Stock") at a conversion price of $0.62 per share, subject to certain adjustments. The purchase price per share of the Series E Preferred Stock was $3.10 per share for gross proceeds to the Company of $2,000,000. In addition, on or before December 31, 2018 and subject to the satisfaction of the conditions under the Purchase Agreement, the Company shall sell, and Calm shall purchase, 322,581 additional shares of Series E Preferred Stock (the "Additional Series E Shares"), which will initially be convertible into 1,612,905 shares of the Company's Common Stock at a conversion price of $0.62 per share, subject to certain adjustments, for gross proceeds to the Company of $1,000,000, which sale of Additional Series E Shares shall be on the same terms and conditions as those contained in the Purchase Agreement.

Series E Preferred Stock

On November 12, 2018, the Company filed with the Secretary of State of the State of Delaware a Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock (the "Certificate of Designations"). Pursuant to the Certificate of Designations, the holders of the Series E Preferred Stock are entitled, among other things, to an aggregate initial liquidation preference of $2,000,000 ($3,000,000 if the Second Closing occurs) and the right to participate in any dividends and distributions paid to common stockholders on an as-converted basis. The Series E Preferred Stock will vote on an as-converted basis. The Series E Preferred Stock is convertible at any time and from time to time without the payment of additional consideration and has a stated value of $3.10 per share of Series E Preferred Stock. In the event of any liquidation or dissolution of the Company, the Series E Preferred Stock ranks 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.

Upon the occurrence of certain fundamental events, the holders of the Series E Preferred Stock will be able to require the Company to redeem the shares of Series E Preferred Stock at the greater of the liquidation preference and the amount per share as would have been payable had the shares of Series E Preferred Stock been converted into Common Stock.

Pursuant to the terms of the Certificate of Designations, on the seven (7) year anniversary of the initial issuance date of the shares of Series E Preferred Stock, the Company may repay each share of the Series E Preferred Stock, at its option, in cash, by delivery of Common Stock or through any combination thereof. Additionally, under certain conditions, the Company may have the right, but not the obligation to convert the outstanding shares of Series E Preferred Stock into Common Stock. If the Company elects to make a payment, or any portion thereof, in shares of Common Stock, the number of shares deliverable (the "Base Shares") will be based on the volume weighted average price (the "VWAP") per share of Common Stock for the thirty (30) trading days prior to the date of calculation (the "Base Price") plus an additional number of shares of Common Stock (the "Premium Shares"), calculated as follows: (i) if the Base Price is greater than $9.00, no Premium Shares shall be issued, (ii) if the Base Price is greater than $7.00 and equal to or less than $9.00, an additional number of shares equal to 5% of the Base Shares shall be issued, (iii) if the Base Price is greater than $6.00 and equal to or less than $7.00, an additional number of shares equal to 10% of the Base Shares shall be issued, (iv) if the Base Price is greater than $5.00 and equal to or less than $6.00, an additional number of shares equal to 20% of the Base Shares shall be issued and (v) if the Base Price is less than or equal to $5.00, an additional number of shares equal to 25% of the Base Shares shall be issued. Accordingly, if the volume weighted average price per share of Common Stock is below $9.00 per share at the time of repayment and the Company exercises the option to make such repayment in shares of Common Stock, a large number of shares of Common Stock may be issued to the holders of Series E Preferred Stock upon maturity, which may have a negative effect on the trading price of Common Stock. At the seven (7) year maturity date of the Series E Preferred Stock, the Company, at its election, may decide to issue shares of Common Stock based on the formula set forth above or to re-pay in cash all or any portion of the Series E Preferred Stock. However, in no event, shall the VWAP per share of Common Stock be determined to be less than $0.62.

In 2025, upon the maturity date of the Series E Preferred Stock, when determining whether to repay the Series E Preferred Stock in cash or shares of Common Stock, the Company expects to consider a number of factors, including its cash position, the price of the Common Stock and the Company's capital structure at such time. Because the Company does not have to make a determination as to which option to elect until 2025, it is impossible to predict whether it is more or less likely to repay in cash, stock or a portion of each.

In addition, the Series E Preferred Stock contains certain protective provisions that limit the Company's ability to make certain cash distributions or payment of any indebtedness without the written consent of the holders of a majority of the outstanding shares of Series E Preferred Stock.

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 E Preferred Stock sold and issued in connection with the Purchase Agreement are not 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.

Seniority to Series D Convertible Preferred Stock

In connection with the entry into the Purchase Agreement, a majority of the holders of the Company's Series D Convertible Preferred Stock (the "Series D Preferred Stock") agreed to waive the provisions of the Certificate of Designation of Preferences, Rights and Limitations of Series D Convertible Preferred Stock prohibiting any class of stock existing senior to the Series D Preferred Stock with respect to right of participation in any dividends and distributions. Upon the issuance of the issuance of the Series E Preferred Stock, the Series D Preferred Stock will rank junior to the Series E Preferred Stock with respect to the Series E Preferred Stock's initial liquidation preference and in right of participation in any dividends and distributions.

Certificate of Designation

On November 13, 2018, the Company filed the Certificate of Designations with the Secretary of State of the State of Delaware, establishing and designating the rights, powers and preferences of the Series E Preferred Stock. The Company designated up to 1,473,300 shares of Series E Preferred Stock.

The foregoing summaries of the Purchase Agreement and Certificate of Designations do not purport to be complete and are qualified in their entirety by reference to the Purchase Agreement and Certificate of Designations, which are attached hereto as Exhibits 10.1 and 3.1, respectively, to this Quarterly Report on Form 10-Q and are incorporated by reference herein.

Item 6. Exhibits.

Exhibit No.	Description
3.1*	Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock.
10.1*	Form of Stock Purchase Agreement, dated November 12, 2018, by and among the Company and Calm.com, Inc.
31.1*	Certification of Principal Executive Officer pursuant to Exchange Act, Rules 13a - 14(a) and 15d - 14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer pursuant to Exchange Act Rules 13a - 14(a) and 15d - 14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32**	Certifications of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document

* Filed herewith.
** Furnished herein.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized on the 14th day of November, 2018.

XpresSpa Group, Inc.

By: /s/ EDWARD JANKOWSKI

Edward Jankowski
Chief Executive Officer
(Principal Executive Officer)

By: /s/ JANINE CANALE

Janine Canale
Controller
(Principal Financial and Accounting Officer)

XPRESSPA GROUP, INC.

**FORM OF CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES E CONVERTIBLE PREFERRED STOCK**

WHEREAS, the Amended and Restated Certificate of Incorporation (the "Charter") of XpresSpa Group, Inc., a Delaware corporation (the "Corporation"), provides for a class of its authorized stock known as preferred stock, comprised of 5,000,000 shares, issuable from time to time in one or more series;

WHEREAS, the Board of Directors of the Corporation (the "Board of Directors") is authorized to fix the dividend rights, voting rights, conversion rights, redemption privileges and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 1,473,300 shares of the preferred stock which the Corporation has the authority to issue, classified as Series E Convertible Preferred Stock, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock in exchange for other securities, rights, or property and does hereby fix and determine in this Certificate of Designation of Preferences, Rights and Limitations of the Series E Convertible Preferred Stock (this "Certificate of Designation") the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series E Convertible Preferred Stock". The initial number of authorized shares of the Series E Convertible Preferred Stock shall be 1,473,300, which, except as provided herein, shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series E Convertible Preferred Stock. Each share of the Series E Convertible Preferred Stock shall have a par value of $0.01.

2. Dividends.

2.1. Dividends and Distributions to the Holders of Common Stock. From and after the first date of issuance of any shares of Series E Convertible Preferred Stock (the "Initial Issuance Date"), the holders of Series E Convertible Preferred Stock (each, a "Holder" and collectively, the "Holders") shall be entitled to receive such dividends paid and distributions made to the holders of common stock, par value $0.01 per share (the "Common Stock"), pro rata to the holders of Common Stock to the same extent as if such Holders had converted the Series E Convertible Preferred Stock into Common Stock and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

2.2. Payment of Dividends. In addition to the dividends described in Section 2.1, from and after the date of the issuance of any shares of Series E Convertible Preferred Stock, dividends at the rate per annum of $0.186 per share shall accrue on such shares of Series E Convertible Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series E Convertible Preferred Stock) (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided, however, that except as set forth in the following sentence of this Section 2.2, in Section 4, or in Section 7, such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (including the Series D Convertible Preferred Stock and other than dividends on shares of Common Stock payable in shares of Common Stock) unless the holders of the Series E Convertible Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series E Convertible Preferred Stock in an amount at least equal to (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series E Convertible Preferred Stock and not previously paid and (ii) the amount required to be paid pursuant to Section 2.1. The dividends described in this Section 2.2 may be paid in shares of Series E Convertible Preferred Stock valued at $3.10 per share (provided that any accrued and unpaid dividend payable at maturity may be paid in shares of Common Stock).

3. Liquidation Preference.

3.1 Preferential Payments to Holders of Series E Convertible Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, subject to the rights of the holders of any other class of preferred stock, the holders of shares of Series E Convertible Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series D Convertible Preferred Stock by reason of their ownership thereof or to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the Stated Value (defined below) plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series E Convertible Preferred Stock been converted into Common Stock pursuant to Section 6 immediately prior to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the "Series E Liquidation Preference Amount"). If upon any such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the Holders the full amount to which they shall be entitled under this Section 3.1, the Holders shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

3.2. Payments to Holders of Series D Convertible Preferred Stock and Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series E Convertible Preferred Stock (subject to the rights of the holders of any other class of preferred stock), the remaining assets of the Corporation available for distribution to its stockholders shall be distributed in accordance with the other provisions of the Charter, including as set forth in the Certificate of Designation of Preferences, Rights and Limitations of the Series D Convertible Preferred Stock (the "Series D Certificate of Designation"). For the avoidance of doubt, this Certificate of Designation shall be deemed to amend the Series D Certificate of Designation so as to effect the senior ranking of the Series E Preferred Stock and the liquidation preference set forth in this Section 3.

4. Deemed Liquidation Events.

4.1. Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

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

4.1.2. "Deemed Liquidation Event" means that the Corporation shall, directly or indirectly, in one or more related transactions, (A) (i) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another Person or (ii) permit any subsidiary of the Corporation to merge or consolidate with or into (whether or not the subsidiary of the Corporation is the surviving corporation) another Person, if the Corporation issues shares of its capital stock pursuant to such merger or consolidation (in either (i) or (ii) of this clause (A)), other than a consolidation or merger involving the Corporation or a subsidiary of the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such consolidation or merger continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such consolidation or merger, at least a majority of the Voting Stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly-owned subsidiary of another corporation immediately following such consolidation or merger, the parent corporation of such surviving or resulting corporation), or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation on a consolidated basis to another entity, or (C) allow another Person(s) to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other Person(s) making or party to, or associated or affiliated with the other Person(s) making or party to, such stock purchase agreement or other business combination).

4.1.3. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

4.1.4. "Eligible Market" means the New York Stock Exchange, Inc., the NYSE MKT, the Nasdaq Global Select Market, the Nasdaq Global Market, and the Nasdaq Capital Market, and any successor to any of the foregoing.

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

4.1.6. "Required Holders" means the holders of record of a majority of the then outstanding shares of Series E Convertible Preferred Stock.

4.1.7. "Stated Value" shall mean $3.10 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series E Convertible Preferred Stock after the Initial Issuance Date.

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

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

4.2. Effecting a Deemed Liquidation Event.

4.2.1. The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in clause (A) of the definition of "Deemed Liquidation Event" unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.

4.2.2. In the event of a Deemed Liquidation Event, if the Corporation does not effect a dissolution of the Corporation under the Delaware General Corporation Law ("DGCL") within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series E Convertible Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the repayment and cancellation of such shares of Series E Convertible Preferred Stock, and (iii) if the holders of at least 50% of the then outstanding shares of Series E Convertible Preferred Stock so request in a written instrument delivered to the Corporation not later than 30 days after receipt of the notice described in clause (i), the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors), together with any other assets of the Corporation available for distribution to its stockholders, subject to the rights of any other existing class of preferred stock, all to the extent permitted by Delaware law governing distributions to stockholders (the "Available Proceeds"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to repay and cancel all outstanding shares of Series E Convertible Preferred Stock at a price per share equal to the Series E Liquidation Preference Amount. Notwithstanding the foregoing, in the event of a repayment pursuant to the preceding sentence, if the Available Proceeds are not sufficient to repay all outstanding shares of Series E Convertible Preferred Stock, the Corporation shall ratably repay each Holder's shares of Series E Convertible Preferred Stock to the fullest extent of such Available Proceeds, and shall repay the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or repayment provided for in this Section 4.2.2, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

4.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon the occurrence of a Deemed Liquidation Event shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors.

4.4. Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to clause (A)(i) of the definition thereof, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), the transaction agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 4.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

5. Voting Rights. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each Holder shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series E Convertible Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Charter, the holders of Series E Convertible Preferred Stock shall vote together with the holders of Common Stock as a single class.

6. Conversion.

6.1. Holder's Right to Convert. The holders of the Series E Convertible Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

6.1.1. Right to Convert.

6.1.1.1. Conversion Ratio. Each share of Series E Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Stated Value (plus any accrued but unpaid dividends) by the Series E Conversion Price (as defined below) in effect at the time of conversion (the result of such fraction, the "Series E Conversion Rate"). The "Series E Conversion Price" shall initially be equal to $0.62. Such initial Series E Conversion Price, and the rate at which shares of Series E Convertible Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. On the Initial Issuance Date, the Series E Conversion Rate shall be equal to 5 shares of Common Stock for each share of Series E Convertible Preferred Stock.

6.1.1.2. Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series E Convertible Preferred Stock.

6.1.2. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series E Convertible Preferred Stock. In lieu of any fractional shares to which the Holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series E Convertible Preferred Stock the Holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

6.2. Mechanics of Conversion. The conversion of Series E Convertible Preferred Stock shall be conducted in the following manner:

6.2.1. Conversion Notice. The Holder of record of shares of Series E Convertible Preferred Stock being converted shall (A) transmit by email (or otherwise deliver) a copy of a properly completed notice of conversion executed by the registered Holder of the Series E Convertible Preferred Stock subject to such conversion in the form attached hereto as Exhibit A (the "Conversion Notice") to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporation's registered transfer agent (the "Transfer Agent") (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 6.2.3, surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates, if any, representing the Series E Convertible Preferred Stock being converted (or compliance with the procedures set forth in Section 11) (the "Preferred Stock Certificates").

6.2.2. Corporation's Response. Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within three (3) Trading Days, send, via email, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the third (3rd) Trading Day following the date of receipt by the Corporation of such Conversion Notice, (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series E Convertible Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series E Convertible Preferred Stock being converted, then the Corporation shall or shall direct the Transfer Agent, as soon as practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series E Convertible Preferred Stock not converted or it shall direct the Transfer Agent to update the Holder's account to reflect the number of shares of Series E Convertible Preferred Stock not converted.

6.2.3. Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series E Convertible Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the Preferred Stock Certificate, if any, unless (A) the full or remaining number of shares of Series E Convertible Preferred Stock represented by the Preferred Stock Certificate are being converted, in which case the Holder shall deliver such Preferred Stock Certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series E Convertible Preferred Stock upon physical surrender of any Series E Convertible Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series E Convertible Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series E Convertible Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series E Convertible Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Series E Convertible Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series E Convertible Preferred Stock unless such Holder first physically surrenders the certificate representing the Series E Convertible Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series E Convertible Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series E Convertible Preferred Stock, the number of shares of Series E Convertible Preferred Stock represented by such certificate may be less than the number of shares of Series E Convertible Preferred Stock stated on the face thereof.

6.2.4. Reservation of Shares. The Corporation shall, so long as any shares of Series E Convertible Preferred Stock are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series E Convertible Preferred Stock according to the terms hereof, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series E Convertible Preferred Stock then outstanding; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series E Convertible Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in all reasonable efforts to obtain the requisite stockholder approval of any necessary amendment to the Charter. Before taking any action which would cause an adjustment reducing the Series E Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series E Convertible Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Series E Convertible Conversion Price.

6.2.5. Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Series E Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via email within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Series E Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via email the disputed arithmetic calculation of the Series E Conversion Rate to any "big four" international accounting firm that is reasonably acceptable to the Corporation and the Holder. The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

6.2.6. Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series E Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the date of conversion.

6.2.7. Effect of Conversion. All shares of Series E Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote in the capacity of a Holder, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversation as provided in Section 6.1.2, and payment of any accrued but unpaid dividends thereon (whether or not declared). Any shares of Series E Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series E Convertible Preferred Stock accordingly.

6.2.8. Transfer Taxes. The issuance of certificates, if any, for shares of the Common Stock on conversion of this Series E Convertible Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series E Convertible Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

6.2.9. Corporation's Failure to Timely Convert. If within three (3) Trading Days after the Corporation's receipt of the copy of a Conversion Notice, the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series E Convertible Preferred Stock (a "Conversion Failure"), and if on or after such third (3rd) Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a "Buy-In"), then, in addition to all other remedies available to the Holder, the Corporation shall, within three (3) Trading Days after the Holder's request pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate. "Closing Sale Price" means, for the shares of Common Stock as of any date, the last closing price for such security on the principal market on which such security is traded, as reported by Bloomberg L.P., or if the foregoing does not apply, the last closing price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg L.P., or, if no closing price is reported for such security by Bloomberg L.P., the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC).

6.3. Corporation's Right to Convert.

6.3.1. At any time or from time to time after the Initial Issuance Date of the Series E Convertible Preferred Stock, if the volume weighted average price per share, as published by Bloomberg L.P. (or if Bloomberg L.P. does not then exist, a comparable publication) ("VWAP") of the shares of Common Stock of the Corporation on its principal trading market that is an Eligible Market (the "Principal Market") over any twenty (20) of the thirty (30) consecutive Trading Days exceeds $9.00 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization) (the "Corporation Conversion Right Event"), the Corporation will have the right, but not the obligation, by notice given no more than ten (10) Trading Days after the occurrence of such Corporation Conversion Right Event, to convert each outstanding share of Series E Convertible Preferred Stock into a number of fully paid and nonassessable shares of Common Stock calculated based on the then applicable Series E Conversion Rate.

6.3.2. To exercise the Corporation's right set forth in Section 6.3.1, the Corporation shall deliver to each Holder of record of Series E Convertible Preferred Stock an irrevocable written notice (a "Corporation Conversion Notice") during the ten (10) Trading Day period referenced above indicating the effective date of the conversion (the "Corporation Conversion Date"), which Corporation Conversion Date shall be not more than sixty (60), nor less than five (5), days following delivery of the Corporation Conversion Notice.

6.3.3. On the Corporation Conversion Date, the outstanding shares of Series E Convertible Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares, if any, are surrendered to the Corporation or its Transfer Agent, and certificates previously representing shares of Series E Convertible Preferred shall represent only the shares of Common Stock into which the shares of Series E Convertible Preferred previously represented thereby have been converted pursuant hereto; *provided*, *however*, that the Corporation shall not be obligated to issue the shares of Common Stock issuable upon such conversion of any shares of Series E Convertible Preferred unless certificates evidencing such shares of Series E Convertible Preferred, if any, are either delivered to the Corporation or the holder notifies the Corporation that such certificates, if any, have been lost, stolen, or destroyed, and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the occurrence of the conversion of the Series E Convertible Preferred pursuant to this Section 6.3, the Holders of shares of Series E Convertible Preferred shall surrender the certificates representing such shares to the Corporation and the Corporation shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section 6.2.2) to the Holder within three (3) Business Days of the Holder's delivery of the applicable Series E Convertible Preferred certificates.

7. Repayment of Series E Convertible Preferred Stock.

7.1. General. On the date that is the seven (7) year anniversary after the Initial Issuance Date of the Series E Convertible Preferred (the "Maturity Date"), the Corporation shall, in accordance with Section 7.2 hereof, repay and cancel each share of Series E Convertible Preferred, at a price per share of the Series E Convertible Preferred equal to the Series E Liquidation Preference Amount, plus an amount equal to any accrued but unpaid dividends payable thereon until the Maturity Date.

7.2. Share Issuance.

7.2.1. On the Maturity Date, the Corporation, at its sole option, may elect to pay to the Holders the Series E Liquidation Preference Amount pursuant to Section 7.1: (i) in cash; (ii) by delivery of shares of Common Stock; or (iii) through any combination of cash and/or Common Stock.

7.2.2. If the Corporation elects to make a payment, or any portion thereof, pursuant to this Section 7, in shares of Common Stock, the number of shares deliverable shall be determined by (A) dividing (x) the cash amount of such payment that would apply if no payment were to be made in Common Stock, or such portion, *by* (y) the VWAP of the Common Stock for the period of thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding the Maturity Date (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization during such period); provided, however that such VWAP of the Common Stock shall not be less than $0.62 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization during such period) (the "Base Price") and adding to the number of shares determined in accordance with clause (A), (B) an additional number of shares of Common Stock (the "Premium Shares"), calculated as follows: (i) if the Base Price as calculated pursuant to clause (A) above is greater than $9.00, no Premium Shares shall be issued, (ii) if the Base Price as calculated pursuant to clause (A) above is greater than $7.00 and equal to or less than $9.00, a number of shares equal to 5% of the shares to be issued pursuant to Section 7.2.2(A), (iii) if the Base Price as calculated pursuant to clause (A) above is greater than $6.00 and equal to or less than $7.00, a number of shares equal to 10% of the shares to be issued pursuant to Section 7.2.2(A), (iv) if the Base Price as calculated pursuant to clause (A) above is greater than $5.00 and equal to or less than $6.00, a number of shares equal to 20% of the shares to be issued pursuant to Section 7.2.2(A) and (v) if the Base Price as calculated pursuant to clause (A) above is less than or equal to $5.00, a number of shares equal to 25% of the shares to issued pursuant to Section 7.2.2(A). All per share prices set forth in Section 7.2.2 shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization after the Initial Issuance Date.

8. Adjustment of Series E Conversion Price.

8.1.1. Adjustment of Series E Conversion Price upon Subdivision or Combination of Common Stock. The Series E Conversion Price shall be subject to adjustment from time to time in accordance with this Section 8. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series E Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Series E Conversion Price in effect immediately prior to such combination will be proportionately increased.

8.1.2. Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 4, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series E Convertible Preferred Stock) is converted into or exchanged for securities, cash or other property, then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series E Convertible Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series E Convertible Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 8 with respect to the rights and interests thereafter of the holders of the Series E Convertible Preferred Stock, to the end that the provisions set forth in this Section 8 (and the provisions with respect to changes in and other adjustments of the Series E Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series E Preferred Stock.

8.2. Notices.

8.2.1. Immediately upon any adjustment of the Series E Conversion Rate and Series E Conversion Price pursuant to Section 8 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 6.2.5.

8.2.2. Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, or (B) with respect to any pro rata subscription offer to holders of Common Stock.

8.2.3. The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which a Deemed Liquidation Event will take place.

9. Status of Converted Stock. In the event any shares of Series E Convertible Preferred Stock shall be converted pursuant to Sections 6 or 7 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

10. Series E Convertible Preferred Stock Protective Provisions.

10.1. At any time when shares of Series E Convertible Preferred Stock are outstanding, the Corporation shall not make payments in connection with any of the following without (in addition to any other vote required by law or the Charter) the written consent of the holders of a majority of the outstanding shares of Series E Convertible Preferred Stock:

10.1.1. any cash dividend or payment of any Indebtedness prior to the time such payment is due and payable or payment in cash of any due and payable Indebtedness where the Corporation may elect to make such payment in shares of capital stock or other equity securities of the Corporation, other than (i) prepayments made out of the proceeds of the sale of capital stock or other equity securities of the Corporation (other than sales of Series E Convertible Preferred Stock) or the incurrence of Indebtedness, so long as the aggregate amount of Indebtedness of the Corporation outstanding following such sale or incurrence is equal to or lesser than the aggregate amount of Indebtedness outstanding immediately prior to such sale or incurrence, (ii) prepayments made in shares of capital stock or other equity securities of the Corporation ranking junior to the Series E Convertible Preferred Stock, (iii) the election to pay dividends, pay any Indebtedness prior to the time such payment is due and payable or pay due and payable Indebtedness in cash if, at the time of such payment, the Corporation has an aggregate cash balance greater than the then aggregate Stated Value of all shares of Series E Convertible Preferred Stock issued prior to such payment (whether or not such shares are then outstanding) (such amount, the "Cash Balance Threshold") and has delivered to the holders of Series E Convertible Preferred Stock the Cash Balance Certificate (defined below), (iv) prepayments or elections to pay in cash with respect to up to an aggregate of $100,000 of Indebtedness that is not Indebtedness for borrowed money evidenced by bonds, notes, debentures or similar instruments or (v) prepayments made out of the proceeds of any Indebtedness incurred by the Corporation with American Express or any of its affiliates, so long as the Indebtedness to be prepaid has a higher interest rate than the Indebtedness incurred by the Corporation with American Express or any of its affiliates; or

10.1.2. any repurchase of any outstanding securities of the Corporation, other than (i) repurchases made out of the proceeds of the sale of capital stock or other equity securities of the Corporation (other than sales of Series E Convertible Preferred Stock) or the incurrence of Indebtedness, so long as the aggregate amount of Indebtedness of the Corporation outstanding following such sale or incurrence is equal to or lesser than the aggregate amount of Indebtedness outstanding immediately prior to such sale or incurrence or (ii) repurchases, if, at the time of such repurchase, the Corporation has an aggregate cash balance greater than the then-applicable Cash Balance Threshold and has delivered to the holders of Series E Convertible Preferred Stock the Cash Balance Certificate.

10.1.3. Prior to taking any action pursuant to Sections 10.1.1(iii) or 10.1.2(ii) (each action a "Proposed Transaction"), the Company shall deliver to the holders of Series E Convertible Preferred Stock a certificate signed by an officer of the Company certifying that: (i) the Company's aggregate cash balance is greater than the Cash Balance Threshold on the date of the Proposed Transaction and at the close of each of the five Business Days immediately prior to the Proposed Transaction and (ii) after giving effect to the Proposed Transaction, the Company's aggregate cash balance will be greater than the Cash Balance Threshold (the "Cash Balance Certificate").

For purposes of this Certificate of Designation, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed (other than trade accounts payable incurred in the ordinary course of business), and (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Corporation's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

11. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series E Convertible Preferred Stock Certificates representing the Series E Convertible Preferred Stock, if any, and, in the case of loss, theft or destruction, of an indemnification undertaking (with surety, if reasonably requested by the Corporation) by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series E Convertible Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series E Convertible Preferred Stock into Common Stock.

12. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series E Convertible Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designation. The Corporation covenants to each holder of Series E Convertible Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series E Convertible Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series E Convertible Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series E Convertible Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

13. Notice. Whenever notice or other communication is required to be given hereunder, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series E Convertible Preferred Stock maintained by the Corporation as set forth in Section 16.

14. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series E Convertible Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

15. Transfer of Series E Convertible Preferred Stock. A Holder may assign some or all of the Series E Convertible Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

16. Series E Convertible Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series E Convertible Preferred Stock, in which the Corporation shall record the name, address and email address of the persons in whose name the Series E Convertible Preferred Stock have been issued, as well as the name, address and email address of each transferee. The Corporation may treat the person in whose name any Series E Convertible Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

17. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, this Certificate of Designation or otherwise with respect to the issuance of the Series E Convertible Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL and the applicable provisions hereof. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

18. General Provisions. In addition to the above provisions with respect to Series E Convertible Preferred Stock, such Series E Convertible Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Charter with respect to preferred stock of the Corporation generally.

19. Waiver and Amendment. Any of the rights, powers, preferences and other terms of the Series E Convertible Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series E Convertible Preferred Stock by the affirmative written consent or vote of the holders of at least 50 % of the shares of Series E Convertible Preferred Stock then outstanding.

signature page follows

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed by the undersigned this 12th day of November, 2018.

XPRESSPA GROUP, INC.

By: /s/ Edward Jankowski
Name: Edward Jankowski
Title: Chief Executive Officer

EXHIBIT A

XPRESSPA GROUP, INC.

The undersigned hereby elects to convert the number of shares of Series E Convertible Preferred Stock, par value $0.01 per share (the "**Series E Convertible Preferred Stock**"), of XpresSpa Group, Inc., a Delaware corporation (the "**Corporation**"), indicated below into shares of Common Stock, par value $0.01 per share (the "**Common Stock**"), of the Corporation, as of the date specified below.

Date of Conversion: _____

Number of shares of Series E Convertible Preferred Stock to be converted: _____

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

Tax ID Number (If applicable): _____

Please confirm the following information: _____

Series E Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Series E Convertible Preferred Stock are being converted in the following name and to the following address:

Issue to: _____

_____

Address: _____

Telephone Number: _____

Email address: _____

Authorization: _____

By: _____

Title: _____

Dated:

Account Number (if electronic book entry transfer): _____

Transaction Code Number (if electronic book entry transfer): _____

_____

Exhibit 10.1

XPRESSPA GROUP, INC.

SERIES E PREFERRED

STOCK PURCHASE AGREEMENT

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SERIES E PREFERRED STOCK PURCHASE AGREEMENT

THIS SERIES E PREFERRED STOCK PURCHASE AGREEMENT (this "**Agreement**"), is made as of the 12th day of November, 2018 by and between XpresSpa Group, Inc., a Delaware corporation (the "**Company**"), and Calm.com, Inc., a Delaware Company (the "**Purchaser**").

The parties hereby agree as follows:

1. Purchase and Sale of Preferred Stock.

1.1 Sale and Issuance of Preferred Stock.

(a) The Company shall adopt and file with the Secretary of State of the State of Delaware on or before the Initial Closing (as defined below) the Certificate of Designation of Preferences, Rights and Limitations of Series E Convertible Preferred Stock, dated November 12, 2018 in the form of Exhibit A attached to this Agreement (the "**Certificate of Designation**").

(b) Subject to the terms and conditions of this Agreement and concurrent with the execution of the agreement between the Company and the Purchaser to be entered into on November 12th, 2018 (the "**Collaboration Agreement**"), the Purchaser agrees to purchase at the Initial Closing (as defined below) and the Company agrees to sell and issue to the Purchaser at the Initial Closing 645,161 shares of Series E Convertible Preferred Stock, $0.01 par value per share (the "**Series E Preferred Stock**"), at a purchase price of $3.10 per share. The shares of Series E Preferred Stock issued to the Purchaser pursuant to this Agreement (including any shares issued at the Initial Closing or the Second Closing, as defined below) shall be referred to in this Agreement as the "**Shares**."

1.2 Closing; Delivery.

(a) The initial purchase and sale of the Shares shall take place remotely via the exchange of documents and signatures, at 10:00 a.m., on November 13, 2018, or at such other time and place as the Company and the Purchaser mutually agree upon, orally or in writing (which time and place are designated as the "**Initial Closing**"). In the event there is more than one closing, the term "**Closing**" shall apply to each such closing unless otherwise specified.

(b) On or before December 31, 2018, or at such other time and place as the Company and the Purchaser mutually agree upon, orally or in writing, the Company shall sell, and the Purchaser shall purchase, on the same terms and conditions as those contained in this Agreement and subject to the conditions set forth in Sections 6 and 7 of this Agreement, 322,581 additional shares of Series E Preferred Stock (the "**Second Closing Shares**") at a purchase price of $3.10 per share. The date of the purchase and sale of the Second Closing Shares are referred to in this Agreement as the "**Second Closing**."

(c) At each Closing, the Company shall deliver to the Purchaser a certificate representing the Shares being purchased by such Purchaser at such Closing against payment of the purchase price therefor by wire transfer to a bank account designated by the Company.

1.3 Use of Proceeds. The Company will use the proceeds from the sale of the Shares for working capital, capital expenditures and other ordinary course business purposes.

1.4 Defined Terms Used in this Agreement. In addition to the terms defined above, the following terms used in this Agreement shall be construed to have the meanings set forth or referenced below.

(a) **Affiliate**" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer, director or trustee of such Person, or any venture capital fund or registered investment company now or hereafter existing that is controlled by one or more general partners, managing members or investment advisers of, or shares the same management company or investment adviser with, such Person.

(b) "**Code**" means the Internal Revenue Code of 1986, as amended.

(c) "**Commission**" means the United States Securities and Exchange Commission.

(d) "**Common Stock**" means the Company's shares of Common Stock, par value $0.01 per share.

(e) "**Common Stock Equivalents**" means any securities of the Company or its Subsidiaries (as defined below) 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.

(f) "**Equity Line of Credit**" means 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 and formula.

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

(h) "**GAAP**" means generally accepted accounting principles in the United States.

(i) "**Indebtedness**" shall have the meaning ascribed to such term in Section 2.26.

(j) "**Intellectual Property Rights**" shall have the meaning ascribed to such term in Section 2.15.

(k) "**Liens**" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

(l) "**Material Adverse Effect**" shall have the meaning assigned to such term in Section 2.2.

(m) "**Material Permits**" shall have the meaning assigned to such term in Section 2.13.

(n) "**Permitted Indebtedness**" means (a) any unsecured liabilities for borrowed money or amounts owed 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 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 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.; (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; and (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.

(o) "**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, (c) Liens 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.

(p) "**Person**" means any individual, corporation, partnership, trust, limited liability company, association or other entity.

(q) "**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.

(r) "**Representatives**" means a party's stockholders, affiliates, directors, officers, employees, agents, investment bankers, attorneys, accountants, consultants, advisors and other representatives.

(s) "**SEC Reports**" shall have the meaning ascribed to such term in Section 2.8.

(t) "**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

(u) "**Shares**" means the shares of Series E Preferred Stock issued at the Initial Closing and the Second Closing.

(v) "**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.

(w) "**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.

(x) "**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.

(y) "**Transaction Agreements**" means this Agreement and the Collaboration Agreement.

(z) "**Variable Rate Transaction**" means an Equity Line of Credit or similar agreement, issue or agree to issue floating or Variable Priced Equity Linked Instruments or issuance or agreement to issue any of the foregoing.

(aa) "**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).

2. Representations and Warranties of the Company. The Company hereby represents and warrants to the Purchaser that, except as set forth in the SEC Reports or on the Disclosure Schedule attached as Exhibit B to this Agreement, which exceptions shall be deemed to be part of the representations and warranties made hereunder, the following representations are true and complete as of the date of the Initial Closing, except as otherwise indicated. The Disclosure Schedule shall be arranged in sections corresponding to the numbered and lettered sections and subsections contained in this Section 2, and the disclosures in any section or subsection of the Disclosure Schedule shall qualify other sections and subsections in this Section 2 only to the extent it is readily apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections.

2.1 Subsidiaries. All of the direct and indirect Subsidiaries of the Company and the Company's ownership interests therein are set forth in Subsection 2.1 of the Disclosure Schedule. 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, nonassessable and free of preemptive and similar rights to subscribe for or purchase securities.

2.2 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 Agreement, 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 Agreement (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.

2.3 Capitalization.

(a) The authorized capital of the Company consists, immediately prior to the Initial Closing, of:

(i) 150,000,000 shares of common stock, $0.01 par value per share, 34,546,518 shares of which are issued and outstanding immediately prior to the Initial Closing. The Company holds no Common Stock in its treasury.

(ii) 5,000,000 shares of Preferred Stock, par value $0.01 per share (the "**Preferred Stock**"), (i) 500,000 of which have been designated Series D Convertible Preferred Stock (the "**Series D Preferred Stock**"), of which 420,541 are outstanding and (ii) 1,473,300 of which have been designated Series E Preferred Stock, none of which are issued and outstanding and all of which may be sold pursuant to this Agreement. The rights, privileges and preferences of the Series E Preferred Stock are as stated in the Certificate of Designation.

(iii) The outstanding shares of Common Stock and Series D Preferred Stock are all duly and validly authorized and issued, fully paid and non-assessable, and were issued in accordance with the registration or qualification provisions of the Securities Act, and any relevant state securities laws, or pursuant to valid exemptions therefrom.

(iv) The Company has reserved 7,573,568 shares of Common Stock for issuance to officers, directors, employees and consultants of the Company pursuant to its 2012 Employee, Director and Consultant Equity Incentive Plan Stock duly adopted by the Board of Directors and approved by the Company stockholders (the "**2012 Plan**").Of such reserved shares of Common Stock pursuant to the 2012 Plan, 455,000 restricted stock units have been issued pursuant to the 2012 Plan, options to purchase 2,285,000 shares have been granted and are currently outstanding, and 3,485,970 shares of Common Stock remain available for issuance to officers, directors, employees and consultants pursuant to the 2012 Plan. The Company has furnished to the Purchaser complete and accurate copies of the 2012 Plan and forms of agreements used thereunder.

(b) Except for (A) the conversion privileges of the Series D Preferred Stock and the Shares to be issued under this Agreement and (B) the securities and rights described in Subsection 2.3(a)(iii) of this Agreement and Subsection 2.3(b) of the Disclosure Schedule, there are no outstanding options, warrants, rights (including conversion or preemptive rights and rights of first refusal or similar rights) or agreements, orally or in writing, to purchase or acquire from the Company any shares of Common Stock or Series E Preferred Stock, or any securities convertible into or exchangeable for shares of Common Stock or Series E Preferred Stock.

(c) Except as set forth in Subsection 2.3(c)(1) of the Disclosure Schedule, 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 Agreements. Except as disclosed in the SEC Reports or in Subsection 2.3(c)(2) of the Disclosure Schedule, 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 in Subsection 2.3(c)(3) of the Disclosure Schedule, the issuance and sale of the Shares 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. Except as contemplated by Section 2.6, no further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Shares. There are no stockholders 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 stockholders. Except as set forth in Subsection 2.3(c)(4) of the Disclosure Schedule, 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.

2.4 Authorization. All corporate action required to be taken by the Company's Board of Directors and stockholders in order to authorize the Company to enter into the Transaction Agreements, and to issue the Shares at the Closing and the Common Stock issuable upon conversion of the Shares, has been taken or will be taken prior to the Closing. All action on the part of the officers of the Company necessary for the execution and delivery of the Transaction Agreements, the performance of all obligations of the Company under the Transaction Agreements to be performed as of the Closing, and the issuance and delivery of the Shares has been taken or will be taken prior to the Closing. The Transaction Agreements, when executed and delivered by the Company, shall constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies or (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

2.5 Valid Issuance of Shares. The Shares, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under the Transaction Agreements, applicable state and federal securities laws and liens or encumbrances created by or imposed by the Purchaser. Assuming the accuracy of the representations of the Purchaser in Section 3 of this Agreement, the Shares will be issued in compliance with all applicable federal and state securities laws. The Common Stock issuable upon conversion of the Shares has been duly reserved for issuance, and upon issuance in accordance with the terms of the Certificate of Designation, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under the Transaction Agreements, applicable federal and state securities laws and liens or encumbrances created by or imposed by a Purchaser. Based in part upon the representations of the Purchaser in Section 3 of this Agreement, the Common Stock issuable upon conversion of the Shares will be issued in compliance with all applicable federal and state securities laws.

2.6 Governmental Consents and Filings. Assuming the accuracy of the representations made by the Purchaser in Section 3 of this Agreement, 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 Agreements, except for (i) the filing of the Certificate of Designation, which will have been filed as of the Initial Closing, (ii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Shares and the listing of the shares of Common Stock underlying the Shares for trading thereon in the time and manner required thereby, and (iii) filings pursuant to Regulation D of the Securities Act, and applicable state securities laws, which have been made or will be made in a timely manner (collectively, the "**Required Approvals**").

2.7 No Conflicts. Except as set forth in Subsection 2.7 of the Disclosure Schedule, the execution, delivery and performance by the Company of this Agreement and the other Transaction Agreements 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, exercise, cancellation adjustment, exchange or reset of (with or without notice, lapse of time or both) 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.

2.8 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. Other than as set forth in Subsection 2.8 of the Disclosure Schedule, 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 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.

2.9 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 or in Subsection 2.9 of the Disclosure Schedule 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 stockholders 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 the 2012 Plan or the 2006 Plan. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Shares contemplated by this Agreement, or as set forth in Subsection 2.9 of the Disclosure Schedule, 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.

2.10 Litigation. Except as set forth in the SEC Reports, 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 Agreements or the Shares or (ii) 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.

2.11 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 in Subsection 2.11 of the Disclosure Schedule, 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.

2.12 Compliance. To the Company's knowledge, neither the Company nor any Subsidiary, 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 (whether or not such default or violation has been 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.

2.13 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.

2.14 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.

2.15 Intellectual Property. (a) The term "**Intellectual Property Rights**" means:

(i) 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**"),

(ii) all patents and patent applications of the Company and each Subsidiary (collectively, "**Patents**");

(iii) all copyrights in both published works and unpublished works of the Company and each Subsidiary (collectively, "**Copyrights**");

(iv) all rights in mask works of the Company and each Subsidiary (collectively, "**Rights in Mask Works**"); and

(v) 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 (i)-(v) 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.

(b) Agreements. Except as set forth in the SEC Reports, there are no outstanding and, to 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

2.16 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 in Subsection 2.16 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.

2.17 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, (iii) other employee benefits, including stock option agreements under the 2012 Plan or the 2006 Plan or any other plan of the Company except as disclosed in Subsection 2.17 to the Disclosure Schedule and (iv) as described in the Company's Annual Report on Form 10-K/A filed with the Commission on April 30, 2018, with respect to a loan facility provided to the Company by Rockmore Investment Master Fund Ltd.

2.18 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.

2.19 Certain Fees. Except as set forth in Subsection 2.19 of the Disclosure Schedule, 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 Agreements. The Purchaser shall have no obligation with respect to any such fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section 2.19 that may be due in connection with the transactions contemplated by the Transaction Agreements.

2.20 Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Shares, 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.

2.21 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.

2.22 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".

2.23 Application of Takeover Protections. The Company and the Board of Directors has 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)(l) 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 Agreements, including without limitation as a result of the Company's issuance of the Shares and the Purchaser's ownership of the Shares.

2.24 Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Agreements, the Company confirms that neither it nor any other Person acting on its behalf has provided the Purchaser or their 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 Schedule 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 no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3 hereof.

2.25 No Integrated Offering. Assuming the accuracy of the Purchaser's representations and warranties set forth in Section 3, 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 Shares 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.

2.26 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 Shares 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. Subsection 2.26 of the Disclosure Schedule 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 $400,000 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 $400,000 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.

2.27 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. 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.

2.28 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.

2.29 Accountants and Lawyers. The Company's accounting firm is set forth on Subsection 2.29 of the Disclosure Schedule. 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, 2018. 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 Agreements.

2.30 Acknowledgment Regarding Purchaser's Purchase of Shares. 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 Agreements and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Agreements and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Agreements and the transactions contemplated thereby is merely incidental to the Purchaser's purchase of the Shares. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Agreements has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

2.31 [*Reserved.*]

2.32 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 Shares, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Shares, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company.

2.33 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.

2.34 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.

2.35 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**").

2.36 Private Placement. Assuming the accuracy of the Purchaser's representations and warranties set forth in Section 3, no registration under the Securities Act is required for the offer and sale of the Shares by the Company to the Purchaser as contemplated hereby. The issuance and sale of the Shares hereunder does not contravene the rules and regulations of the Trading Market.

2.37 No General Solicitation. Neither the Company nor any person acting on behalf of the Company has offered or sold any of the Shares by any form of general solicitation or general advertising. The Company has offered the Shares for sale only to the Purchaser and certain other accredited investors as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Securities Act..

2.38 Indebtedness and Seniority of Equity. 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 Subsection 2.38 of the Disclosure Schedule, as of the Closing Date, no equity securities of the Company are or will be pari passu or senior to the Shares in right of payment, whether with respect to the payment of dividends or upon liquidation or dissolution, or otherwise.

2.39 Listing and Maintenance Requirements. The Common Stock is listed on the Nasdaq Capital Market under the symbol "XSPA." Except as set forth in Subsection 2.39 of the Disclosure Schedule or 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.

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

2.41 No Disqualification Events. With respect to the Shares 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.

2.42 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.

2.43 Other Covered Persons. Except as set forth in Subsection 2.43 of the Disclosure Schedule 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.

2.44 No Outstanding Variable Priced Equity Linked Instruments. As of the Closing Date and except as set forth in Subsection 2.38 of the Disclosure Schedule, the Company does not have outstanding nor issuable any Variable Priced Equity Linked Instruments, nor any debt or equity with antidilution (other than adjustments for stock splits, distributions, dividends, recapitalizations, fundamental transactions and the like), ratchet or reset rights.

2.45 Survival. The foregoing representations and warranties shall survive the Closing.

3. Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants to the Company that:

3.1 Authorization. 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 the Transaction Agreements. The Transaction Agreements 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 in accordance with their terms, except (i) as limited by 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.

3.2 Purchase Entirely for Own Account. This Agreement is made with the Purchaser in reliance upon the Purchaser's representation to the Company, which by the Purchaser's execution of this Agreement, the Purchaser hereby confirms, that the Shares to be acquired by the Purchaser will be acquired for investment for the Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, the Purchaser further represents that the Purchaser does not presently have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations to such Person or to any third Person, with respect to any of the Shares. The Purchaser has not been formed for the specific purpose of acquiring the Shares.

3.3 Disclosure of Information. The Purchaser has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the offering of the Shares with the Company's management and has had an opportunity to review the Company's facilities. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 2 of this Agreement or the right of the Purchaser to rely thereon.

3.4 Restricted Securities. The Purchaser understands that the Shares have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Purchaser's representations as expressed herein. The Purchaser understands that the Shares are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Purchaser must hold the Shares indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Purchaser acknowledges that the Company has no obligation to register or qualify the Shares, or the Common Stock into which it may be converted, for resale. The Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, the time and manner of sale, the holding period for the Shares, and on requirements relating to the Company which are outside of the Purchaser's control, and which the Company is under no obligation and may not be able to satisfy.

3.5 No Public Market. The Purchaser understands that no public market now exists for the Shares, and that the Company has made no assurances that a public market will ever exist for the Shares.

3.6 Legends. The Purchaser understands that the Shares and any securities issued in respect of or exchange for the Shares, may be notated with one or all of the following legends:

"THE SHARES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933."

(a) Any legend set forth in, or required by, the other Transaction Agreements.

(b) Any legend required by the securities laws of any state to the extent such laws are applicable to the Shares represented by the certificate, instrument, or book entry so legended.

3.7 Accredited Investor. The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

3.8 No General Solicitation. Neither the Purchaser, nor any of its officers, directors, employees, agents, stockholders or partners has either directly or indirectly, including, through a broker or finder (a) engaged in any general solicitation, or (b) published any advertisement in connection with the offer and sale of the Shares.

3.9 Exculpation Among Purchaser. The Purchaser acknowledges that it is not relying upon any Person, other than the Company and its officers and directors, in making its investment or decision to invest in the Company.

3.10 Residence. The office of the Purchaser in which its principal place of business is identified in the address of the Purchaser set forth on the signature page.

4. Covenants of the Company.

4.1 Lock-Up Agreements. The Company shall have received and delivered to Purchaser on or before the Initial Closing "lock-up" agreements, each substantially in the form of Exhibit C hereto, executed by officers and directors of the Company and shareholders of the Company affiliated with the Company's officers and directors (including, Rockmore Investment Master Fund Ltd. and Mistral Spa Holdings, LLC) relating to sales and certain other dispositions of shares of Common Stock or certain other securities, and such "lock-up" agreements shall be in full force and effect on the Initial Closing.

4.2 Exclusivity. During the period beginning on the date hereof and ending on the date that is sixty (60) days after the date hereof (the "**Exclusivity Period**"), the Company shall not, and shall not authorize or permit any of its Representatives to, without Purchaser's consent, directly or indirectly, solicit, initiate or take any action to facilitate or encourage any inquiries or the making of any proposal from a person or group of persons other than Purchaser and its affiliates that may constitute, or could reasonably be expected to lead to, a Competing Transaction (as defined below); (ii) enter into or participate in any discussions or negotiations with any person or group of persons other than Purchaser and its affiliates regarding a Competing Transaction; (iii) furnish any information relating to the Company or any of its subsidiaries, assets or businesses, or afford access to the assets, business, properties, books or records of the Company or any of its subsidiaries to any person or group of persons other than Purchaser and its Representatives, in all cases for the purpose of assisting with or facilitating a Competing Transaction, or enter into any agreement, agreement in principle or other commitment (whether or not legally binding) with respect to a loan or credit facility, co-marketing agreement (other than with respect to co-marketing of retail products), licensing agreement, joint venture or partnership (other than current or potential joint ventures or partnerships between the Company and the entities listed in Annex I), merger, sale of substantially all of its assets or capital stock, business combination, or equity raise (a "**Competing Transaction**"), or knowingly solicit, initiate or encourage the submission of any proposal or offer from any person or entity (including any of their officers, directors, employees, representatives or agents) relating to any Competing Transaction. Further, the Company shall not participate in or cooperate with any due diligence efforts of any other party interested in a Competing Transaction. However, nothing herein shall limit the Company from pursuing leases, franchise and other operational agreements or, negotiating and/or consummating any draw down or refinancing of all, or any portion, of or under its current debt financing arrangements (the convertible notes held by Alpha Capital Anstalt and the other investors party to that certain Securities Purchase Agreement, dated as of May 15, 2018, by and among XpresSpa Group, Inc. and each purchaser party thereto, loans expected to be made by American Express and all Indebtedness outstanding pursuant to the Credit Agreement and Waiver dated as of April 22, 2015, as subsequently amended, by and between XpresSpa Holdings, LLC and Rockmore Investment Master Fund Ltd., collectively, the "**Existing Lenders**"), provided that the Company shall promptly deliver any such financing proposals, term sheets, loan agreements, or related documents to the Purchaser prior to entering into any refinancing with any party other than an Existing Lender and such refinancing shall not conflict with the consummation of the transactions contemplated by Transaction Agreements, paying such debt as it becomes due (principal and interest) in equity or honoring outstanding obligations under convertible or exercisable securities.

4.3 Board Observer. The Purchaser shall be entitled to appoint one nonvoting observer (the "**Observer**") to attend each meeting of the Company's board of directors (the "**Board**") or committee of the Board and to receive copies of all communications received by the Board members, including, without limitation, notices regarding the call of meetings, provided, however, that the Company reserves the right to exclude the Observer from access to any portion of materials or any portion of a meeting to the extent such portion of the materials or meeting contains information (i) the disclosure of which would, in the opinion of the Company or its counsel, adversely affect the attorney-client privilege between the Company and its counsel, (ii) the Board determines that the Observer has a conflict of interest that is specific to the Observer or (iii) the Board otherwise determines that Observers receipt of such materials or attendance at such meeting would materially and adversely affect the Company. Upon reasonable notice and at a scheduled meeting of the Board or such other time, if any, as the Board may determine in its sole discretion, Observer may address the Board with respect to the Purchaser's concerns regarding significant business issues facing the Company. Prior to attendance at any meeting of the Company's Board or the receipt of copies of any communications received by the Board members, the Observer shall enter into a standard Regulation FD Confidentiality Agreement reasonably acceptable to the Company. The Purchaser agrees and Observer or any other representative of the Purchaser shall agree, to keep confidential and not disclose, divulge, or use for any purpose (other than to monitor its investment in the Company), including trading, any confidential information obtained from the Company pursuant to the terms of this Section 4.3 other than to the Purchaser's attorneys, accountants, consultants, and other professionals, to the extent necessary to obtain their services in connection with monitoring the Purchaser's investment in the Company; provided, however, that prior to the disclosure of any confidential information obtained from the Company pursuant to the terms of this Section 4.3 to any of the Purchaser's representatives, any such representative shall have entered into a standard Regulation FD Confidentiality Agreement reasonably acceptable to the Company.

5. Covenants of the Purchaser.

5.1 Restriction on Sale of Shares. The Purchaser covenants with the Company that, without the prior written consent of the Company, the Purchaser will not, during the period ending 180 days after the date of the execution of this Agreement (the "**Restricted Period**"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock beneficially owned (as such term is used in Rule 13d-3 of the Securities Exchange Act), by the Purchaser or any other securities so owned convertible into or exercisable or exchangeable for Common Stock (including Series D Preferred Stock, Series E Preferred Stock or any warrants or options convertible into or exercisable or exchangeable for Common Stock) or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (a) transactions relating to shares of Common Stock or other securities acquired in open market transactions after the execution of this Agreement, *provided* that no filing under Section 16(a) of the Exchange Act shall be required or shall be voluntarily made in connection with subsequent sales of Common Stock or other securities acquired in such open market transactions, (b) transfers of shares of Common Stock or any security convertible into Common Stock as a bona fide gift, or (c) distributions of shares of Common Stock or any security convertible into Common Stock (including shares of the Series D Preferred Stock and Series E Preferred Stock) to limited partners or stockholders of the Purchaser; *provided* that in the case of any transfer or distribution pursuant to clause (b) or (c), (i) each donee or distributee shall sign and deliver a lock-up letter substantially to the effect of this Section 5.1 and (ii) no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of shares of Common Stock, shall be required or shall be voluntarily made during the Restricted Period, or (d) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock, *provided* that (i) such plan does not provide for the transfer of Common Stock during the Restricted Period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the Purchaser regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Common Stock may be made under such plan during the Restricted Period. The Purchaser also agrees and consents to the entry of stop transfer instructions with the Purchaser's transfer agent and registrar against the transfer of the Purchaser's shares except in compliance with the foregoing restrictions.

6. Conditions to the Purchaser' Obligations at Closing. The obligations of the Purchaser to purchase Shares at the Initial Closing or the Second Closing are subject to the fulfillment, on or before such Closing, of each of the following conditions, unless otherwise waived:

6.1 Representations and Warranties. The representations and warranties of the Company contained in Section 2 shall be true and correct in all material respects (determined without regard to any materiality, Material Adverse Effect or other similar qualifiers therein) as of the Initial Closing.

6.2 Performance. The Company shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by the Company on or before such Closing.

6.3 Collaboration Agreement. The Company shall have executed the Collaboration Agreement and performed all of its obligations thereunder in all material respects and complied in all material respects with all covenants, agreements, and conditions contained therein through, with respect to the Initial Closing, the date of the Initial Closing and, with respect to the Second Closing, December 31, 2018, including placing all Products (as defined in the Collaboration Agreement) identified as of the Closing on the designated shelves within ten (10) days of receipt of such Products by each Store (as defined in the Collaboration Agreement).

6.4 Qualifications. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall be obtained and effective as of such Closing.

6.5 Opinion of Company Counsel. The Purchaser shall have received from Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., counsel for the Company, an opinion, dated as of the Initial Closing, in substantially the form of Exhibit D attached to this Agreement.

6.6 Certificate of Designation. The Company shall have filed the Certificate of Designation 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.

6.7 Secretary's Certificate. The Secretary of the Company shall have delivered to the Purchaser at the Closing a certificate certifying (i) the Bylaws of the Company and (ii) resolutions of the Board of Directors of the Company approving the Transaction Agreements and the transactions contemplated under the Transaction Agreements.

6.8 Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to the Purchaser, and the Purchaser (or its counsel) shall have received all such counterpart original and certified or other copies of such documents as reasonably requested. Such documents may include good standing certificates.

6.9 Material Adverse Effect. From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

7. Conditions of the Company's Obligations at Closing. The obligations of the Company to sell Shares to the Purchaser at the Initial Closing or the Second Closing are subject to the fulfillment, on or before the Closing, of each of the following conditions, unless otherwise waived:

7.1 Representations and Warranties. The representations and warranties of the Purchaser contained in Section 3 shall be true and correct in all material respects (determined without regard to any materiality, Material Adverse Effect or other similar qualifiers therein) as of such Closing.

7.2 Performance. The Purchaser shall have performed in all material respects and complied in all material respects with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by them on or before such Closing.

7.3 Qualifications. All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall be obtained and effective as of the Closing.

7.4 Collaboration Agreement. The Purchaser shall have executed the Collaboration Agreement and performed all of its obligations thereunder in all material respects and complied in all material respects with all covenants, agreements, and conditions contained therein through, with respect to the Initial Closing, the date of the Initial Closing and, with respect to the Second Closing, December 31, 2018.

8. Miscellaneous.

8.1 Survival of Warranties. Unless otherwise set forth in this Agreement, the representations and warranties of the Company and the Purchaser contained in or made pursuant to this Agreement shall survive the execution and delivery of this Agreement and the Closing and shall in no way be affected by any investigation or knowledge of the subject matter thereof made by or on behalf of the Purchaser or the Company.

8.2 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

8.3 Governing Law. This Agreement shall be governed by the internal law of the State of New York, without regard to conflict of law principles that would result in the application of any law other than the law of the State of New York.

8.4 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

8.5 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

8.6 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt, or (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on the signature page, or to such e-mail address, facsimile number or address as subsequently modified by written notice given in accordance with this Section 8.6. If notice is given to the Company, a copy shall also be sent 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 if notice is given to the Purchaser, a copy shall also be given to 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.

8.7 No Finder's Fees. Except as set forth in Subsection 2.19 of the Disclosure Schedule, each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with this transaction. The Purchaser agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of this transaction (and the costs and expenses of defending against such liability or asserted liability) for which the Purchaser or any of its officers, employees or representatives is responsible. The Company agrees to indemnify and hold harmless the Purchaser from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of this transaction (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its officers, employees or representatives is responsible.

8.8 Fees and Expenses. Irrespective of whether any Closing is effected, each of the Company and the Purchaser shall pay all costs and expenses that it respectively incurs with respect to the negotiation, execution, delivery and performance of this Agreement. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the Transaction Agreements or the Certificate of Designation, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

8.9 Amendments and Waivers. Except as set forth in Section 1.2 of this Agreement, any term of this Agreement may be amended, terminated or waived only with the written consent of the Company and the holders of a majority of the then-outstanding Shares. Any amendment or waiver effected in accordance with this Section 8.9 shall be binding upon the Purchaser and each transferee of the Shares (or the Common Stock issuable upon conversion thereof), each future holder of all such securities, and the Company.

8.10 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

8.11 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

8.12 Entire Agreement. This Agreement (including the Exhibits hereto), the Certificate of Designation and the other Transaction Agreements constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled.

8.13 Termination of Closing Obligations. The Purchaser shall have the right to terminate its obligations to complete the Initial Closing or the Second Closing, as the case may be, if prior to the occurrence thereof, any of the following occurs:

(a) the Company consummates a Deemed Liquidation Event (as defined in the Certificate of Designation); or

(b) the Company (i) applies for or consents to the appointment of a receiver, trustee, custodian or liquidator of itself or substantially all of its property, (ii) becomes subject to the appointment of a receiver, trustee, custodian or liquidator of itself or substantially all of its property, (iii) makes an assignment for the benefit of creditors, (iv) institutes any proceedings under the United States Bankruptcy Code or any other federal or state bankruptcy, reorganization, receivership, insolvency or other similar law affecting the rights of creditors generally, or files a petition or answer seeking reorganization or an arrangement with creditors to take advantage of any insolvency law, or files an answer admitting the material allegations of a bankruptcy, reorganization or insolvency petition filed against it, or (v) becomes subject to any involuntary proceedings under the United States Bankruptcy Code or any other federal or state bankruptcy, reorganization, receivership, insolvency or other similar law affecting the rights of creditors generally, when proceeding is not dismissed within thirty (30) days of filing, or have an order for relief entered against it in any proceedings under the United States Bankruptcy Code.

8.14 WAIVER OF JURY TRIAL. WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION AGREEMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties have executed this Series E Preferred Stock Purchase Agreement as of the date first written above.

COMPANY: XPRESSPA GROUP, INC.

By: /s/ Edward Jankowski

Name: Edward Jankowski
(print)

Title: Chief Executive Officer

Address: 780 Third Avenue, 12th Floor

New York, New York 10017

PURCHASER: CALM.COM, INC.

Michael Acton Smith

(Print Name of Purchaser)

By: /s/ Michael Acton Smith

Name: Michael Acton Smith
(print)

Title:

Address: 140 Second Street,

San Francisco, California 94105

PURCHASER: CALM.COM, INC.

Alex Tew

(Print Name of Purchaser)

By: /s/ Alex Tew

Name: Alex Tew
(print)

Title:

Address: 140 Second Street,

San Francisco, California 94105

EXHIBITS

Exhibit A -	**FORM OF CERTIFICATE OF DESIGNATION**
Exhibit B -	**DISCLOSURE SCHEDULE**
Exhibit C -	**FORM OF LOCK-UP AGREEMENT**
Exhibit D -	**FORM OF LEGAL OPINION OF COMPANY COUNSEL**
Annex I -	**CURRENT OR POTENTIAL JOINT VENTURES OR PARTNERSHIPS BETWEEN THE COMPANY AND ENTITIES**

EXHIBIT A

FORM OF CERTIFICATE OF DESIGNATION

EXHIBIT B

DISCLOSURE SCHEDULE

EXHIBIT C

FORM OF LOCK-UP AGREEMENT

EXHIBIT D

FORM OF LEGAL OPINION OF COMPANY COUNSEL

ANNEX I

CURRENT OR POTENTIAL JOINT VENTURES OR PARTNERSHIPS BETWEEN THE COMPANY AND ENTITIES

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002

I, Edward Jankowski, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of XpresSpa Group, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's first fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 14, 2018

/s/ EDWARD JANKOWSKI

Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002

I, Janine Canale, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of XpresSpa Group, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's first fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 14, 2018

/s/ JANINE CANALE

Controller
(Principal Financial and Accounting Officer)

Exhibit 32

CERTIFICATIONS OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of XpresSpa Group, Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The Quarterly Report for the quarter ended September 30, 2018 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 14, 2018

/s/ EDWARD JANKOWSKI

Edward Jankowski
Chief Executive Officer
(Principal Executive Officer)

Date: November 14, 2018

/s/ JANINE CANALE

Janine Canale
Controller
(Principal Financial and Accounting Officer)