

Fill in this information to identify the case:

Debtor Daybreak Developments, Inc.

United States Bankruptcy Court for the: _____ District of New Jersey
(State)

Case number 24-11962

**Official Form 410
Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Cecilio Musical Instruments, Inc., Kenneth Khuong and Siufong Wu</u> <small>Name of the current creditor (the person or entity to be paid for this claim)</small>	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Contact phone <u>626-780-1985</u> Contact email <u>kristy.kwu@gmail.com</u>	Contact phone _____ Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ <small>MM / DD / YYYY</small>	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ 666,666.00. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Asset Purchase Agreement

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/23/2024
MM / DD / YYYY

/s/Siufong Wu aka Kristy Siufong Wu
Signature

Print the name of the person who is completing and signing this claim:

Name Siufong Wu aka Kristy Siufong Wu
First name Middle name Last name

Title CEO

Company Cecilio Musical Instruments
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 967-0496 | International +1 (310) 751-2696

Debtor: 24-11962 - Daybreak Developments, Inc.		
District: District of New Jersey, Trenton Division		
Creditor: Cecilio Musical Instruments, Inc., Kenneth Khuong and Siufong Wu Kristy Siufong Wu 22189 Rim Fire Ln Diamond Bar, CA, 91765-3602 Phone: 626-780-1985 Phone 2: 909-922-4900 Fax: Email: kristy.kwu@gmail.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded	
	Related Document Statement:	
	Has Related Claim: No	
	Related Claim Filed By:	
	Filing Party: Creditor	
Other Names Used with Debtor:	Amends Claim: No	
	Acquired Claim: No	
Basis of Claim: Asset Purchase Agreement	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 666,666.00	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No	Nature of Secured Amount:	
Amount of 503(b)(9): No	Value of Property:	
Based on Lease: No	Annual Interest Rate:	
Subject to Right of Setoff: No	Arrearage Amount:	
	Basis for Perfection:	
	Amount Unsecured:	
Submitted By: Siufong Wu aka Kristy Siufong Wu on 23-Apr-2024 4:23:37 p.m. Eastern Time		
Title: CEO		
Company: Cecilio Musical Instruments		

ASSET PURCHASE AGREEMENT

by and among

DAYBREAK DEVELOPMENTS, INC.

as Buyer,

CECILIO MUSICAL INSTRUMENTS, INC.,

KK MUSIC STORE, INC.,

KENNETH KHUONG and

SIUFONG WU

as Sellers,

dated as of

September 30, 2020

EXHIBITS AND DISCLOSURE SCHEDULES

Exhibits

Exhibit A.....Form of Escrow Agreement
Exhibit B.....Form of Bill of Sale
Exhibit C.....Form of Assignment and Assumption Agreement
Exhibit D.....Form of Intellectual Property Assignment Agreement
Exhibit E.....Migration Conditions
Exhibit F.....Transition Services Agreement
Exhibit G.....Payoff Letter
Exhibit H.....EIDL Balance
Exhibit I.....Amazon Balance

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “**Agreement**”), dated as of September 30, 2020 (the “**Effective Date**”), is entered by and among CECILIO MUSICAL INSTRUMENTS, INC., a California corporation (the “**Company 1**”), KK MUSIC STORE, INC., a California corporation (the “**Company 2**” and collectively with Company 1, the “**Company**”) KENNETH KHUONG, an individual (“**KK**”), SIUFONG WU, an individual (“**SW**” and together with the Company 1, Company 2 and KK, the “**Sellers**” and each a “**Seller**”), and DAYBREAK DEVELOPMENTS, INC., a Delaware corporation (“**Buyer**”). Together, Buyer and Sellers shall be referred to herein as the “**Parties**” or each, a “**Party**”.

RECITALS

WHEREAS, the Company is engaged in the business of selling musical instruments category products (including, without limitation, drums, violins, flutes, clarinets, cellos, trumpets, violas, saxophones, piccolos, tambourines, trombones, horns, maracas, euphoniums, ukulele, tone blocks, guitars, triangles, recorders, handbells, and all accessories associated with each product) under the “KK Music Store” and “Cecilio” brand names (the “**Business**”);

WHEREAS, Sellers wish to sell and assign to Buyer, and Buyer wishes to purchase and assume from Sellers, substantially all the assets, and only certain specified liabilities, of the Business, subject to the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Certain Definitions. As used in this Agreement, the following terms have the respective meanings set forth below:

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

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

“**Amazon Online Marketplace**” means any website or other online point of presence, mobile application, service or feature through which Amazon markets, sells, syndicates, offers, merchandises or otherwise makes products or services available to consumers.

“Amazon Seller Restriction” means any suspension, takedown, review-scraping, restriction, hold or other restraint or penalty imposed, directly or indirectly, on any ASCA controlled by a Seller or any of the listings associated with the Purchased Products which reside with an ASCA controlled by a Seller which restrains or prohibits Sellers’ ability to conduct the Business in the ordinary course, including, but not limited to, Sellers’ ability to sell Purchased Products on the Amazon Online Marketplace; excluding any of the foregoing which result from, or are caused by, the transactions contemplated by this Agreement and Ancillary Documents.

“Amazon” means Amazon.com, Inc. or any of its Affiliates.

“Ancillary Documents” means the Escrow Agreement, the Bill of Sale, the Assignment and Assumption Agreement, Intellectual Property Assignment, the Transition Services Agreement, the Payoff Letter and all other agreements, instruments and documents required to be delivered at the Closing.

“ASCA” means an Amazon Seller Central Account.

“ASIN” means an Amazon Standard Identification Number.

“Baseline Revenue” means the Company’s Net Revenue during the period beginning on July 1, 2019 and ending on June 30, 2020.

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in Los Angeles, California or New York, New York, United States of America are authorized or required by Law to be closed for business.

“Closing Inventory Date” means the Business Day immediately preceding the Closing Date.

“Closing Inventory Value” means (a) an amount equal to the dollar value of the Inventory Deposits *plus* (b) the Landed Inventory Cost of the Closing Units; *minus* (c) the Unpaid Inventory Balance; *minus* (d) (i) the Landed Inventory Cost of such Closing Units which are determined, by Buyer in its sole and absolute discretion, to be obsolete, damaged, defective, slow-moving or otherwise not in saleable condition or (ii) any costs incurred by Sellers to make such Closing Units saleable.

“Closing Units” means all units of Inventory actually held by the Company as of the Closing Inventory Date; *provided, however*, that Closing Units shall expressly exclude any and all units of Inventory that are associated with an Inventory Deposit.

“Code” means the Internal Revenue Code of 1986 of the United States, as amended.

“Contracts” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral, to which a Seller is a party.

“Dataram” means that certain due diligence data room located at <https://ws.onehub.com/workspaces/1256665/>.

“**Disclosure Schedules**” means the Disclosure Schedules delivered by Sellers and Buyer concurrently with the execution and delivery of this Agreement.

“**Dollars**” or “**\$**” means the lawful currency of the United States.

“**Encumbrance**” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“**Environmental Law**” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any hazardous materials.

“**Escrow Agent**” means Ecommerce Law Group.

“**Escrow Agreement**” means the Escrow Agreement to be entered into by Buyer, Sellers and the Escrow Agent at the Closing, substantially in the form of Exhibit A attached hereto.

“**Excluded Contract**” means any Contract to which a Seller is a party which is not an Assigned Contract.

“**GAAP**” means United States generally accepted accounting principles.

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Included Inventory Value**” means \$750,000.

“**Intellectual Property Agreements**” means all licenses, sublicenses, consent to use agreements, assignment agreement, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Intellectual Property that is used or held for use in the conduct of the Business as currently conducted or proposed to be conducted to which a Seller is a party, beneficiary or otherwise bound.

“Intellectual Property Assets” means all Intellectual Property and Intellectual Property Registrations that are owned by a Seller and used or held for use in the conduct of the Business as currently conducted or proposed to be conducted, together with all (i) royalties, fees, income, payments, and other proceeds now or hereafter due or payable to a Seller with respect to such Intellectual Property; and (ii) claims and causes of action with respect to such Intellectual Property or rights under Intellectual Property Agreements, whether accruing before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal or equitable relief for past, present, or future infringement, misappropriation, or other violation thereof.

“Intellectual Property Registrations” means all Intellectual Property Assets that are subject to any issuance, registration, or application by or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued Patents, registered Trademarks, domain names and Copyrights, and pending applications for any of the foregoing.

“Intellectual Property” means any and all past, present, and future rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) (**“Patents”**); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin (registered and unregistered), together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing (**“Trademarks”**); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing (**“Copyrights”**); (d) internet domain names and social media account or user names (including “handles”), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media accounts and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) mask works, and all registrations, applications for registration, and renewals thereof; (f) industrial designs, diagrams, drawings, and all Patents, registrations, applications for registration, and renewals thereof; (g) trade secrets, know-how, inventions (whether or not patentable), ideas, discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, formulas, designs, and other confidential and proprietary information and all rights therein (**“Trade Secrets”**); (h) computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, network configurations and architectures and other documentation thereof (**“Software”**); (i) rights of publicity; and (j) all other intellectual or industrial property and proprietary rights of any kind and nature.

“Inventory Deposit” means any deposits or prepayments made to any third parties for the purchase of Inventory (including, but not limited to, manufacturers).

“Inventory” means inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories associated with the Business except for inventory, finished

goods, raw materials, work-in-progress, packaging, supplies, parts and other inventories which are associated with the Excluded Assets.

“Fulfillment Center” means (i) any fulfillment center operated by Amazon or (ii) for Purchased Products not fulfilled by Amazon, any third-party logistics center or fulfillment center at which a Purchased Product is delivered by Sellers for distribution to end customers.

“Landed Cost Per Unit” means, for any Purchased Product, the sum of all costs incurred by Sellers to source, manufacture, transfer, package, ship, prepare for sale (including quality control measures) or otherwise deliver such Purchased Product to a Fulfillment Center for distribution to end customers, as listed opposite such Purchased Product on Section 4.04(b)(i) of the Disclosure Schedules in the column titled “Total Landed Cost”.

“Landed Inventory Cost” means, for any Inventory, the dollar value found by multiplying the number of units of Inventory under consideration by the Landed Cost Per Unit for such units.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“Liabilities” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“Longstop Date” means November 14, 2020.

“Losses” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; provided, however, that “Losses” shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Business, or (b) the value of the Purchased Assets; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which Sellers operate, including the Business’ industry; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities, terrorism, or other intervening acts outside of the reasonable control of Sellers, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement; (vi) any changes in applicable Laws or accounting rules, including GAAP; or (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement; *provided further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on Company compared to other participants in the industries in which Company conducts its businesses. If

Seller's supplements to the Disclosure Schedules pursuant to Section 6.01(e) disclose facts or circumstances which are materially inconsistent with the representations and warranties made by Sellers pursuant to this Agreement as of the Closing Date, it shall be considered a Material Adverse Effect.

"Net Revenue" means gross revenue, less any product refunds, returns, discounts, including Amazon promotional fees.

"Ordinary Course of Business" or **"ordinary course of business"** means, in respect of any Person, the ordinary course of such Person's business through the Closing Date, as conducted by any such Person in accordance with past practice (including with respect to quantity and frequency) and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in this Agreement or in any Ancillary Document.

"Payoff Letter" means a payoff letter in the form attached hereto as Exhibit G that (i) specifies the aggregate amount required to be paid to fully satisfy and discharge all principal, interest, fees, expenses, premiums and other amounts related to the Purchased Assets then due and payable as of the Closing Date pursuant to various promissory notes made by Sellers (collectively, the **"Loan Documents"**) in favor of East West Bank, a California state-chartered banking corporation (the **"Lender"** and such amount, the **"Payoff Amount"**), (ii) provides for termination of all guarantees and Liens, if any, in connection therewith relating to the Purchased Assets securing such obligations upon the payment of Payoff Amount on the Closing Date and (iii) states that upon receipt of the Payoff Amount, the Loan Documents and all related loan documents, as they related to the Purchased Assets, shall be terminated (but excluding any contingent obligations, including indemnification obligations, that in any such case are not then due and payable and that by their terms are to survive the termination of the Loan Documents and the related loan documents).

"Permits" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances, certifications, and similar rights obtained, or required to be obtained, from the relevant federal, state, local, or foreign Governmental Authorities.

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

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

"Purchased Product" means each ASIN in the Amazon Online Marketplace or any SKU (or equivalent thereof in another marketplace, online or otherwise) as set forth on Section 2.01(a) of the Disclosure Schedules.

"Real Property" means, collectively, fixed property, principally land and buildings, owned by a Seller.

"Remaining Units" means any Closing Units which are not Included Units.

“**Representative**” means, with respect to any Person, any and all shareholders, directors, officers, members, managers employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Restricted Business**” means any business engaged in the of selling or marketing musical instruments category products (including, without limitation, drums, violins, flutes, clarinets, cellos, trumpets, violas, saxophones, piccolos, tambourines, trombones, horns, maracas, euphoniums, ukulele, tone blocks, guitars, triangles, recorders, handbells, and all accessories associated with each product) or other products competitive with the Business, whether before or after the Closing Date.

“**Sellers’ Knowledge**” or any other similar knowledge qualification, means the actual or constructive knowledge of any Seller, or director or officer of Company 1 or Company 2, after due inquiry.

“**Substantial Representations**” means those representations and warranties set forth in (and any claim arising from an inaccuracy or breach of) Section 4.01 (Organization), Section 4.02 (Authority), Section 4.03 (No Conflicts; Consents), Section 4.08 (Title to Assets), Section 4.09 (Intellectual Property), Section 4.10 (Inventory), Section 4.13 (Suppliers), Section 4.15(c) (Amazon Compliance) and Section 4.20 (Taxes).

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Tax**” or “**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

ARTICLE II PURCHASE AND SALE

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Sellers, free and clear of any Encumbrances (subject to Buyer’s payment of those portions of the Purchase Price described in Section 2.05(a), Section 2.05(b), Section 2.05(c), all of Sellers’ right, title and interest in, to and under all assets, properties and rights of every kind and nature, whether they be real or personal, tangible or intangible (including goodwill), fixed or current, wherever located and whether now existing or hereafter acquired, which relate to, or are used or held for use in connection with, the Business, but excluding the Excluded Assets (all of the assets to be sold, conveyed, transferred, assigned and delivered to Buyer hereunder, the “**Purchased Assets**”), including, without limitation, the following:

- (a) the Purchased Products, as set forth on Section 2.01(a) of the Disclosure Schedules;
- (b) all Included Inventory;
- (c) all Contracts set forth on Section 2.01(c) of the Disclosure Schedules (the “**Assigned Contracts**”);
- (d) all Intellectual Property Agreements;
- (e) all Intellectual Property Assets;
- (f) all prepaid expenses, credits, advance payments, claims, security;
- (g) all of Sellers’ rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;
- (h) all insurance benefits, including rights and proceeds, arising from or relating to the Business, the Purchased Assets or the Assumed Liabilities;
- (i) all books and records related to the Business, including, without limitation, books of account, ledgers and general, financial and accounting records, files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, raw material lists, research and development files, records and data (including all correspondence with any Governmental Authority), formulas, designs, instructions, sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the Intellectual Property Assets and the Intellectual Property Agreements (collectively, the “**Books and Records**”); and
- (j) all goodwill and the going concern value of the Business.

Section 2.02 Excluded Assets. Notwithstanding any of the foregoing, including Section 2.01, the Purchased Assets shall not include the following assets (collectively, the “**Excluded Assets**”).

- (a) Contracts that are not Assigned Contracts (the “**Excluded Contracts**”);
- (b) the assets, properties and rights identified on Section 2.02(b) of the Disclosure Schedules; and
- (c) the rights which accrue or will accrue to Sellers under this Agreement and the Ancillary Documents.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only those liabilities expressly set forth on Section 2.03 of the Disclosure Schedules (“**Assumed Liabilities**”).

Section 2.04 Excluded Liabilities. Notwithstanding the provisions of Section 2.03 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Sellers or any of Sellers’ Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the “**Excluded Liabilities**”). Sellers shall, and shall cause each of their Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy.

Section 2.05 Purchase Price. The aggregate purchase price for the Purchased Assets (other than the Remaining Inventory) the (“**Purchase Price**”) shall be equal to:

(a) the Payoff Amount set forth in the Payoff Letter, including charge for per diem interest; *plus*

(b) the amount payable under Sellers’ SBA Economic Injury Disaster Loans pursuant to Sellers’ Pay.Gov account statements attached hereto as Exhibit H, which is hereby incorporated by reference (the “**EIDL Balance**”); *plus*

(c) the amount payable under Sellers’ Amazon Lending working capital loan pursuant to Sellers’ Amazon Seller Central account statement attached hereto as Exhibit I, which is hereby incorporated by reference (the “**Amazon Balance**”); *plus*

(d) Twenty Million Dollars (\$20,000,000.00) minus (i) the Payoff Amount, (ii) the EIDL Balance, and (iii) the Amazon Balance (the “**Initial Cash Consideration**”); *plus*

(e) the aggregate amount of Deferred Payments pursuant to Section 2.06(d) below; *plus*

(f) the aggregate amount of Performance Payments, if earned, pursuant to Section 2.06(e) below.

Section 2.06 Payment of Purchase Price. The Purchase Price shall be paid as follows:

(a) Payoff Amount. At the Closing, conditional upon Sellers’ delivery to Buyers of the Payoff Letter, duly executed by Lender, Buyers shall pay to Lender by wire transfer of immediately available funds to an account designated in writing by Lender, an amount equal to the Payoff Amount.

(b) Cash to Escrow Agent. At the Closing Date, Buyer shall deposit the Initial Cash Consideration (the “**Escrow Amount**”) with the Escrow Agent to be held in an escrow account designated in writing by the Escrow Agent (the “**Escrow Account**”) and released by the Escrow Agent in accordance with the terms and conditions of this Agreement and the Escrow Agreement.

(c) Release of Escrow Amount. Upon Buyer confirmation of a Completed Migration pursuant to Section 6.01 below, Buyer shall instruct Escrow Agent to release the Escrow Amount to Sellers in accordance with the terms of the Escrow Agreement.

(d) Deferred Payments. On each of the first three yearly anniversaries following the Closing Date, Buyer will pay to Sellers, and Sellers shall be entitled to receive deferred payments (the “**Deferred Payments**” and each a “**Deferred Payment**”), subject to Section 2.06(f) below, each which payment will be made in immediately available fund, by wire transfer, to an account designated in writing by Sellers. The Deferred Payments will be deemed earned and non-contingent as of the Closing, and will not be subject to offset, except pursuant to Section 7.05.

(i) On the one (1) year anniversary of the Closing Date, Buyer will pay to Sellers the sum of \$666,667;

(ii) On the two (2) year anniversary of the Closing Date, Buyer will pay to Sellers the sum of \$666,667; and

(iii) On the three (3) year anniversary of the Closing Date, Buyer will pay to Sellers the sum of \$666,666.

(e) Stabilization Payment. Buyer shall pay to the Sellers additional consideration, if earned, which shall be based upon the performance of the Business during the twelve-month period following the Closing Date (the “**Stabilization Period**”), in accordance with the following:

(i) If, at the expiration of the Stabilization Period, the cumulative Net Revenue of the Business during the Stabilization Period (the “**Stabilization Period Revenue**”) is greater than or equal to the Baseline Revenue, then Buyer shall pay to Seller the amount of \$1,000,000, subject to Section 2.06(f) below. If, at the expiration of the Stabilization Period, the Stabilization Period Revenue is greater than or equal to eighty percent (80%) of Baseline Revenue, then Seller shall be entitled to receive a payment in an amount equal to (x) \$1,000,000 multiplied by the Tier 2 Stabilization Proportion, subject to Section 2.06(f) below. As used herein, “**Tier 2 Stabilization Proportion**” shall be a number equal to the Stabilization Period Revenue divided by the Baseline Revenue.

(ii) For avoidance of doubt, the Parties agree that under no circumstances shall the Stabilization Payment exceed \$1,000,000.

(iii) The Stabilization Payment payable to Sellers hereunder shall be paid within thirty (30) days following the date on which Buyer has closed its books for the fiscal quarter during which the Stabilization Payment has expired, by wire transfer of immediately available funds to an account designated in writing by Sellers, provided, that, solely for the purpose of this Section 2.06(e)(iii) Buyer shall close its books within forty-five (45) days of the end of such fiscal quarter.

(iv) Stabilization Period Audit Right.

(A) Buyer shall maintain separate books and records, including, but not limited to, books of account, in relation to its and its Affiliates' conduct of the Business during the Stabilization Period and for an additional period of thirty (30) days after the last date on which the Stabilization Payment remains payable under this Agreement. Upon a Seller's reasonable notice to Buyer and during normal business hours, such Seller or its Representatives may audit, and Buyer shall provide such Seller and its Representatives full access to, such books, records and accounts (such materials, the "**Stabilization Payment Methodology**"). If any such examination discloses that Buyer failed to pay or underpaid the Stabilization Period, then Buyer and the Sellers shall negotiate in good faith to resolve such objections within fifteen (15) days after the delivery.

(B) Within fifteen (15) days after the delivery of the Stabilization Payment Methodology, the Sellers shall have fifteen (15) days (the "**Stabilization Payment Review Period**") to review the Stabilization Payment Methodology. On or prior to the last day of the Stabilization Payment Review Period, the Sellers may object to the amount due in respect of the applicable Stabilization Payment by delivering to Buyer a written statement setting forth the Sellers' objections in reasonable detail, indicating each disputed item or amount and the basis for the Sellers' disagreement therewith (the "**Stabilization Payment Statement of Objections**"). If the Sellers fail to deliver the Stabilization Payment Statement of Objections before the expiration of the Stabilization Payment Review Period, the final determination of the applicable Stabilization Payment shall be deemed to have been accepted by the Sellers. If the Sellers deliver the Stabilization Payment Statement of Objections before the expiration of the Stabilization Payment Review Period, Buyer and the Sellers shall negotiate in good faith to resolve such objections within fifteen (15) days after the delivery of the Stabilization Payment Statement of Objections (the "**Stabilization Payment Resolution Period**"), and, if the same are so resolved within the Stabilization Payment Resolution Period, the resulting determination of the Stabilization Payment with such changes as may have been previously agreed in writing by Buyer and the Sellers, shall be final and binding.

(C) If the Sellers and Buyer fail to reach an agreement with respect to all of the matters set forth in the Stabilization Payment Statement of Objections before the expiration of the Stabilization Payment Resolution Period, then any amounts not in dispute shall be promptly paid to the Sellers and, with respect to any amounts remaining in dispute ("**Disputed Stabilization Payment Amounts**"), Buyer and the Sellers shall appoint independent accountants who, acting as experts and not arbitrators, shall resolve the Disputed Stabilization Payment Amounts only and make any adjustments to the final determination of the Stabilization Payment. The Parties agree that all adjustments shall be made without regard to materiality. The independent accountants shall only decide the specific

items under dispute by the Parties and their decision for each Stabilization Payment Amount and must be within the range of values assigned to each such item in the Stabilization Payment Statement of Objections, respectively.

(D) The fees and expenses of the independent accountants shall be paid by Sellers, on the one hand, and by Buyer, on the other hand, based upon the percentage that the amount actually contested but not awarded to either Sellers, or Buyer, respectively, bears to the aggregate amount actually contested by each of Sellers and Buyer.

(E) The independent accountants shall make a determination as soon as practicable within thirty (30) days (or such other time as the Parties shall agree in writing) after their engagement, and their resolution of the Disputed Stabilization Payment Amounts and their adjustments to the final determination of the Stabilization Payment shall be conclusive and binding upon the Parties. Any such adjustments, if payable to the Sellers, shall be paid within five (5) Business Days following the independent accountants' resolution of the Disputed Stabilization Payment Amounts.

(f) Right of Set-Off. Buyer shall have the right to set off against any Stabilization Payment all or any portion of Losses which Buyer Indemnitees are entitled to setoff pursuant to Section 7.05.

Section 2.07 Purchase of Inventory.

(a) Purchase and Sale of Inventory. Subject to the terms and conditions of this Agreement and in accordance with Section 2.01(b), Sellers shall sell, assign and transfer to Buyer and Buyer shall purchase and accept from Sellers, free and clear of any Encumbrances, all of Sellers' right, title and interest in, to and under all Inventory, including without limitation, the Inventory Deposits and Closing Units.

(b) Inventory Purchase Price.

(i) The Parties agree that the Initial Cash Consideration includes consideration paid in respect of an amount of immediately verifiable, saleable Closing Units whose Landed Inventory Cost is equal to the Included Inventory Value (such units, the "**Included Units**").

(ii) The purchase price for the Remaining Units shall be the Closing Inventory Value (as determined in accordance with Section 2.07(b)(iii) below) less the Included Inventory Value. For the avoidance of doubt, the Purchase Price payable to Sellers pursuant to Section 2.06 shall not include consideration in respect of the Remaining Units, which shall be paid to Sellers solely in accordance with this Section 2.07.

(iii) Within thirty (30) days of the Closing Date, Buyer shall calculate the Closing Inventory Value (the "**First Inventory Calculation**"), provided,

however, Buyer acknowledges that the Closing Inventory Value will be increased by Inventory in transit as of the Closing Date, including, without limitation, Inventory reshipped to Sellers due to cancelled wholesale purchase orders (the “**Second Inventory Calculation**”). For the purpose of calculating the Closing Inventory Value, Buyer shall (x) confirm in good faith the quantity of Closing Units actually held by Buyer as of the Closing Inventory Date and (y) determine, in its sole and absolute discretion, the quantity of such Closing Units which are obsolete, damaged, defective, slow-moving or otherwise not in saleable condition.

(iv) Upon final calculation of each of the First Inventory Calculation and Second Inventory Calculation in accordance with Section 2.07(b)(iii) above, Buyer shall pay to Sellers an amount in respect of the Remaining Units equal to the Closing Inventory Value *less* the Included Inventory Value by wire transfer of immediately available funds.

Section 2.08 Allocation of Purchase Price. Sellers and Buyer agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) as shown on the allocation schedule (the “**Allocation Schedule**”). A draft of the Allocation Schedule shall be prepared by Buyer and delivered to Sellers within thirty (30) days following the Closing Date. If Sellers notifies Buyer in writing that Seller objects to one or more items reflected in the Allocation Schedule, Sellers and Buyer shall negotiate in good faith to resolve such dispute; *provided, however,* that if Sellers and Buyer are unable to resolve any dispute with respect to the Allocation Schedule within sixty (60) days following the Closing Date, such dispute shall be resolved first, by an independent accountant mutually acceptable to Sellers and Buyer, and if the Parties are unable to agree to an independent accountant, pursuant to Section 8.15. The fees and expenses of any independent accountant shall be borne equally by Sellers, on the one hand, and Buyer, on the other. Buyer and Sellers shall file all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with the Allocation Schedule. Any adjustments to the Purchase Price pursuant to this Agreement shall be allocated in a manner consistent with the Allocation Schedule.

Section 2.09 Withholding Tax. Buyer shall be entitled to deduct and withhold from the Purchase Price all Taxes that Buyer may be required to deduct and withhold under the Code or any other Law related to Taxes. All such withheld amounts shall be treated as delivered to Sellers hereunder.

Section 2.10 Third Party Consents. To the extent that Sellers’ rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Sellers, at their own expense, shall use their reasonable best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer’s rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Sellers, to the maximum extent permitted by law and the Purchased Asset, shall act after the Closing as Buyer’s agent in order to obtain for it the benefits thereunder and shall

cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer.

Section 2.11 Procedure for Assignment of Purchased Assets. Notwithstanding anything to the contrary in this Agreement, to the extent that any sale, conveyance, transfer or assignment of any Purchased Assets, or any claim, right or benefit arising thereunder or resulting therefrom (collectively, the “**Interests**”) contemplated hereunder is not permitted without the consent of any Person which consent has not been obtained at or prior to the Closing, including, without limitation, as a result of Encumbrance upon such Interests, this Agreement shall not be deemed to constitute a sale, conveyance, transfer or assignment of any such Interest (a “**Retained Interest**”) unless and until such consent is obtained, at which time such Retained Interest shall be deemed to be sold, conveyed, transferred and assigned in accordance with the provisions hereunder, subject to any condition or provision contained in such consent, whereupon it shall cease to be a Retained Interest. With respect to any Retained Interest, this Agreement and the Ancillary Documents shall constitute an equitable assignment by Seller to Buyer of all of Sellers’ rights, benefits, title and interest in and to, and the equitable assumption by Buyer of the Assumed Liabilities thereunder (but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, breach of warranty or other breach, default or violation by Sellers prior to the Closing), such Retained Interest to the extent permitted by applicable Law, and Buyer shall be deemed to be Sellers’ agent for the purpose of performing, fulfilling and discharging Sellers’ rights and obligations arising after the Closing Date under such Retained Interest. In furtherance of the foregoing, following Closing, until the completion of the transfer of all Retained Interests to Buyer, Seller will: (a) provide to Buyer the benefits of each Retained Interest; (b) cooperate in reasonable and lawful arrangements designed to provide such benefits to Buyer; (c) enforce, at the request of Buyer and for the account and expense of Buyer, any rights of Seller arising from or related to such Retained Interest; and (d) promptly pay over and remit to Buyer without consideration any payments or other rights or benefits received by Seller with respect to any such Retained Interests.

ARTICLE III CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall be effective as of 11:59 PM, eastern standard time, on the Effective Date (the “**Closing Date**”).

Section 3.02 Closing Deliverables. All of the actions set forth in this Section 3.02 shall occur and shall be deemed to occur simultaneously, such that no action shall be deemed to have been completed or any document delivered until all such actions have been completed and all such documents have been delivered.

(a) Sellers’ Closing Deliverables. At the Closing, Sellers shall deliver to Buyer the following:

- (i) the Escrow Agreement duly executed by each Seller;

(ii) a bill of sale, in the form of Exhibit B attached hereto (the “**Bill of Sale**”) and duly executed by each Seller, transferring all of the tangible personal property included in the Purchased Assets to Buyer;

(iii) an assignment and assumption agreement, in the form of Exhibit C attached hereto (the “**Assignment and Assumption Agreement**”) and duly executed by each Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities, if any;

(iv) an assignment, in the form of Exhibit D attached hereto (the “**Intellectual Property Assignment Agreement**”) and duly executed by each Seller, transferring all of Sellers’ right, title and interest in and to the Intellectual Property Assets to Buyer;

(v) the Transition Services Agreement (as defined herein), duly executed by each Seller;

(vi) a certificate of the Secretary or Assistant Secretary of each Seller that is an entity certifying that attached thereto are (x) the resolution of such Seller, duly adopted and in effect, which authorizes the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby and (y) the names and signatures of the officers of such Seller authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder; and

(vii) the Payoff Letter duly executed by Lender; and

(viii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

(b) Buyer’s Closing Deliverables.

(i) At the Closing, Buyer shall deliver to the Sellers the following:

(A) the Escrow Agreement, duly executed by Buyer;

(B) the Bill of Sale, duly executed by Buyer;

(C) the Assignment and Assumption Agreement, duly executed by Buyer;

(D) the Intellectual Assignment Agreement, duly executed by Buyer; and

(E) the Transition Services Agreement (as defined herein), duly executed by Buyer;

(F) a certificate of the Secretary or Assistant Secretary of Buyer certifying that attached thereto are (x) the resolution of Buyer, duly adopted and in effect, which authorizes the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby and (y) the names and signatures of the officers of Buyer authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder.

(ii) At the Closing, Buyer shall deliver to the Escrow Agent the following:

(A) the Escrow Amount, by wire transfer of immediately available funds to the Escrow Account to be held in accordance with the terms of the Escrow Agreement; and

(B) the Escrow Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, each Seller, jointly and severally, represents and warrants to Buyer that the statements contained in this ARTICLE IV are true and correct as of the Effective Date.

Section 4.01 Organization and Qualification. Each entity comprising the Company is a corporation duly organized, validly existing and in good standing under the Laws of California and has full power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted. Sellers have provided Buyer with a list of each jurisdiction in which the Company is licensed or qualified to do business and the Company is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary.

Section 4.02 Authority. The Company has full company power and authority to enter into this Agreement and the Ancillary Documents to which the Company is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Sellers of this Agreement and any Ancillary Document to which Sellers are a party, the performance by Sellers of their obligations hereunder and thereunder and the consummation by Sellers of the transactions contemplated hereby and thereby have been duly authorized by all requisite company action on the part of Sellers. This Agreement has been duly executed and delivered by Sellers, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Sellers enforceable against Sellers in accordance with its terms.

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Sellers of this Agreement and the Ancillary Documents to which they are a party, and the

consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of formation or incorporation, by-laws or other organizational documents of the Company; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to any Seller, the Business or the Purchased Assets; (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which any Seller is a party or by which any Seller or the Business is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any Encumbrance on the Purchased Assets. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to any Seller in connection with the execution and delivery of this Agreement or any of the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

Section 4.04 Financial Statements.

(a) Section 4.04(a)(i) of the Disclosure Schedules contains true, correct, current, and complete copies of year to date profit and loss statements through June 30, 2020 and for the prior two calendar years (the “**P&L Statement**”). Section 4.04(a)(ii) of the Disclosure Schedules contains a true, correct, current, and complete copy of the balance sheet of the Business (the “**Balance Sheet**”) as of June 30, 2020 (the “**Balance Sheet Date**”).

(b) Section 4.04(b)(i) of the Disclosure Schedules contains true, correct and complete copies of all purchase orders (including any associated freight charges) relating to the Purchased Assets (including Inventory) for the two calendar years prior to the Closing Date (the “**Purchase Orders**”). Section 4.04(b)(ii) of the Disclosure Schedules sets forth the Landed Cost Per Unit for each Purchased Product and the data which correctly and completely, as reported on the P&L Statement and reflected in the Purchase Orders, substantiates the Landed Cost Per Unit for each Purchased Product (including, without limitation, quantities per Purchased Product, manufacturing cost, freight cost, customs, and total landed cost).

(c) Section 4.04(c) of the Disclosure Schedules contains a true, correct, current and complete list of all operating expenses of the Company in the twelve (12) months prior to the Closing Date, which, in the aggregate during such period, equaled or exceeded \$2,500, including, without limitation, any costs associated with accounting services, tax services, legal services unrelated to this transaction, rent, office supplies, insurance, corporate taxes, or any licensing fees (collectively, the “**Operational Expenses**”).

(d) Section 4.04(d) of the Disclosure Schedules contains a true, correct, current and complete list of all marketing channels or other partners with whom Sellers have paid an aggregate amount of \$1,000 or more in the twelve (12) months preceding the Closing Date and specifies the aggregate amount spent on each such marketing channels or other partner, in each instance (collectively, the “**Marketing Expenses**”). The Marketing

Expenses as presented on the P&L Statement are a complete and accurate total of all marketing expenses incurred on behalf of the business, including, without limitation, advertising expenses on Amazon, Facebook, and Google.

(e) The P&L Statement and the Balance Sheet have been prepared in accordance with GAAP, and on a consistent basis throughout the period involved, subject to normal and recurring year-end adjustments. The P&L Statement and the Balance Sheet are based on the books and records of the Business, and fairly present the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated.

Section 4.05 Undisclosed Liabilities. Except as set forth on Section 4.05 of the Disclosure Schedules, Seller has no Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Balance Sheet, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

Section 4.06 Absence of Certain Changes, Events and Conditions. Since the Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been any: (a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; nor (b) a material change in cash management practices and policies, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits.

Section 4.07 Material Contracts.

(a) Section 4.07(a) of the Disclosure Schedules lists each Contract (x) by which any of the Purchased Assets are bound or affected or (y) to which any Seller is a party or by which any Seller is bound in connection with the Business or the Purchased Assets (such Contracts, together with all Intellectual Property Agreements, the “**Material Contracts**”).

(b) Each Material Contract is valid and binding on the Seller that is party to such contract in accordance with its terms and is in full force and effect. No Seller nor, to Sellers’ Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) or has provided or received any notice of intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer. There are no material disputes pending or threatened under any Contract included in the Purchased Assets.

Section 4.08 Title to Purchased Assets. Sellers have good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. All such Purchased Assets (including leasehold interests, subject to the rights of the lessors thereof) are free and clear of Encumbrances.

Section 4.09 Real Property. Except as set forth on Section 4.09 of the Disclosure Schedules, Sellers do not own or lease or have any ownership or leasehold interest in any real property.

Section 4.10 Intellectual Property.

(a) Section 4.10(a) of the Disclosure Schedules contains a correct, current and complete list of: (i) all Intellectual Property Registrations, specifying as to each, as applicable: the title, mark, or design; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration or application serial number; the issue, registration or filing date; and the current status; (ii) all unregistered Trademarks included in the Intellectual Property Assets; (iii) all proprietary Software included in the Intellectual Property Assets; and (iv) all other Intellectual Property Assets that are used or held for use in the conduct of the Business as currently conducted or proposed to be conducted.

(b) Section 4.10(b) of the Disclosure Schedules contains a correct, current and complete list of all Intellectual Property Agreements, in each case identifying the Intellectual Property covered by such Intellectual Property Agreement. Sellers have provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all such Intellectual Property Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement is valid and binding on Sellers in accordance with its terms and is in full force and effect. No Seller nor any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Intellectual Property Agreement.

(c) Sellers are the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations, record, owners of all right, title and interest in and to the Intellectual Property Assets, and have the valid and enforceable right to use all other Intellectual Property used or held for use in or necessary for the conduct of the Business as currently conducted or as proposed to be conducted, in each case, free and clear of Encumbrances. Sellers have entered into binding, valid and enforceable written Contracts with each current and former employee and independent contractor whereby such employee or independent contractor (i) acknowledges such Seller's exclusive ownership of all Intellectual Property Assets invented, created or developed by such employee or independent contractor within the scope of his or her employment or engagement with such Seller; (ii) grants to such Seller a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property; and (iii) irrevocably waives any right or interest, including any moral rights, regarding such Intellectual Property, to the extent permitted by applicable Law. Sellers have provided Buyer with true and complete copies of all such Contracts.

(d) Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, Buyer's right to own or use any Intellectual Property Assets or any Intellectual Property subject to any Intellectual Property Agreement, except with respect to certain non-transferable Software licenses with respect to generally available Software.

(e) All of the Intellectual Property Assets and all Intellectual Property subject to any Intellectual Property Agreement are valid and enforceable, and all Intellectual Property Registrations are subsisting and in full force and effect. Sellers have used commercially reasonable efforts to maintain and enforce the Intellectual Property Assets all Intellectual Property subject to any Intellectual Property Agreement and to preserve the confidentiality of all Trade Secrets included in the Intellectual Property Assets, including by requiring all Persons having access thereto to execute binding, written non-disclosure agreements, to the extent such Persons are not already bound by duties of non-disclosure or confidentiality. Notwithstanding the foregoing, Sellers make no representation or warranty as to whether any of the Intellectual Property Assets comprise Trade Secrets. All required filings and fees related to the Intellectual Property Registrations have been timely submitted with and paid to the relevant Governmental Authorities and authorized registrars.

(f) The conduct of the Business as currently and formerly conducted and as proposed to be conducted, including the use of the Intellectual Property Assets and the Intellectual Property subject to any Intellectual Property Agreements in connection therewith, and the products, processes, and services of the Business have not infringed, misappropriated, or otherwise violated and will not infringe, misappropriate, or otherwise violate the Intellectual Property or other rights of any Person. No Person has infringed, misappropriated, or otherwise violated any Intellectual Property Assets or the Intellectual Property subject to any Intellectual Property Agreement.

(g) There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding) settled, pending, or to Seller's Knowledge, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation of the Intellectual Property of any Person by any Seller in the conduct of the Business; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Intellectual Property Asset; or (iii) by any Seller or any other Person alleging any infringement, misappropriation, or violation by any Person of any Intellectual Property Assets. No Seller is aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. No Seller is subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Intellectual Property Assets.

Section 4.11 Inventory.

(a) Section 4.11(a) of the Disclosure Schedules sets forth a materially complete and accurate list of (i) all Inventory as of the Inventory Closing Date, including the Landed Cost Per Unit attributable to each such unit of Inventory; and (ii) all Inventory Deposits. All Inventory, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except (1) for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. and (2) reserve for shrinkage in relation to 1% of the Inventory.

(b) Except as set forth on Section 4.11(b) of the Disclosure Schedules, as of the Closing Date, no Inventory is subject to any unpaid or outstanding balances owed to any third party (the aggregate amount of the amounts listed on Section 4.11(b) of the Disclosure Schedules, the “**Unpaid Inventory Balance**”). All Inventory is owned by Sellers free and clear of all Encumbrances (except for purchase money liens in favor of Sellers’ suppliers, with respect to current accounts payable), and no Inventory is held on a consignment basis. The quantities of each item of Inventory (whether raw materials, work-in-process or finished goods) are not excessive but are reasonable in the present circumstances of Sellers and shall be maintained consistently at those same levels unless advised otherwise by Buyer.

Section 4.12 Accounts Receivable. All accounts or notes receivable held by Sellers, and any security, claim, remedy or other right related to any of the foregoing (“**Accounts Receivable**”) reflected on the Balance Sheet and the Accounts Receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by Sellers involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of Sellers not subject to meritorious claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (c) subject to a reserve for bad debts shown on the Balance Sheet or on the accounting records of the Business, are substantially and materially collectible within 90 days after sale, or such other period of collection in accordance with past practices.

Section 4.13 Suppliers. Section 4.13 of the Disclosure Schedules sets forth with respect to the Business (i) each supplier to whom Sellers have paid consideration for goods or services during any of the two most recent fiscal years (collectively, the “**Material Suppliers**”); and (ii) the amount of purchases from each Material Supplier during such periods. No Seller has received any notice, and has no reason to believe, that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business.

Section 4.14 Insurance. Section 4.14 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers’ compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by any Seller or an Affiliate of a Seller and relating to the Business, the Purchased Assets or the Assumed Liabilities (collectively, the “**Insurance Policies**”). There are no claims related to the Business, the Purchased Assets or the Assumed Liabilities pending under any such Insurance Policies. No Seller nor any Affiliate of a Seller has

received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (a) are in full force and effect and enforceable in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. No Seller nor any Affiliate of a Seller is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Business and are sufficient for compliance with all applicable Laws and Contracts to which any Seller is a party or by which it is bound. True and complete copies of the Insurance Policies have been made available to Buyer.

Section 4.15 Legal Proceedings; Governmental Orders. Except as set forth on Section 4.15 of the Disclosure Schedules, there are no Actions pending or, to Sellers' Knowledge, threatened against or by any Seller and no event has occurred, or circumstances exist that may give rise to, or serve as a basis for, any such Action. There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business.

Section 4.16 Compliance With Laws; Permits.

(a) Each Seller has materially complied, and is now complying, with all Laws, including without limitation, Environmental Laws and packaging requirements, applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets. All Permits required for Sellers to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Sellers and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Sellers have provided a complete and accurate list of all current Permits issued to any Seller which are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit. No Seller has received, at any time since January 1, 2016, any notice or other communication (whether oral or written) from any Governmental Authority regarding any (A) material violation of, or failure to comply with, any Law applicable to the operation of the Business, or (B) any actual or alleged obligation on the part of any Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any material nature with respect to any Purchased Assets.

(b) Each Seller has complied and currently complies in all material respects with labeling, advertising, and other rules, regulations, and requirements of the Federal Trade Commission in connection with the operation of the Business and the manufacture, marketing, testing, evaluation, advertising, marketing, labeling, and sales of its products. Each product manufactured, sold, delivered, or otherwise held in inventory by Sellers in the conduct of the Business has only included the ingredients set forth on the labels of such product.

Section 4.17 Data Protection; PCI Compliance; Amazon.

(a) Each Seller has materially complied with all applicable Laws, including related to intellectual property, and its published privacy policies and internal privacy policies and guidelines relating to privacy, data protection and data security, including with respect to the collection, storage, transmission, transfer (including cross-border transfers), disclosure and use of personally identifiable information (including personally identifiable information of employees, contractors, and third parties who have provided information to such Seller). There has been no loss, damage, or unauthorized access, use, modification, or other misuse of any personally identifiable information or other confidential information maintained by or on behalf of any Seller. No Person (including any Governmental Authority) has made any claim or commenced any Action or proceeding with respect to loss, damage, or unauthorized access, use, modification, or other misuse of any such information and there is no reasonable basis for any such claim, proceeding or Action.

(b) Each Seller has at all times remained in compliance with the terms of service, conditions of use, and any and all other agreements or arrangements (including click-through arrangements) imposed by Amazon, the Amazon Online Marketplace or any other online marketplace. There is no Amazon Seller Restriction in effect, pending or threatened against any Seller and, to Sellers' Knowledge, no event has occurred, or circumstances exist that may give rise to, or serve as a basis for, any Amazon Seller Restriction.

(c) There is no (i) claim, Action, proceeding, or investigation by Amazon of any nature pending, or to Sellers' Knowledge, threatened against any Seller relating to or affecting any ASCA controlled by any Seller; (ii) to Sellers' Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action relating to any ASCA controlled by any Seller; (iii) no Seller has ever received any notice or communication from Amazon effecting or threatening to effect an Amazon Seller Restriction; (iv) no other material issues have occurred with Sellers' Amazon account(s); (v) each Seller has at all times operated the ASCA(s) controlled by such Seller in accordance with all Amazon terms of use, applicable rules, and polices; (vi) no reviews have been removed from any ASCA controlled by any Seller; and (vii) no Seller has not received any safety incident, performance notification, or infringement notification from Amazon.

Section 4.18 Employee Benefit Matters. Except as set forth on Section 4.18 of the Disclosure Schedules, no Seller has ever maintained, sponsored, contributed to, or was required to be contribute to any employee benefit plan.

Section 4.19 Employment Matters. Section 4.19 of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Business as of the Effective Date. As of the Effective Date, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Business for services performed on or prior to the Effective Date have been paid in full and there are no outstanding agreements, understandings or commitments of any Seller with respect to any compensation, commissions, bonuses or fees. Each Seller is and has been in

compliance in all material respects with all applicable Laws pertaining to employment and employment practices.

Section 4.20 Taxes. All Tax Returns with respect to the Business required to be filed by Seller have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all material respects. All Taxes due and owing by any Seller with respect to the Business (whether or not shown on any Tax Return) have been, or will be, timely paid by such Seller. Each Seller has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law. No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of any Seller. All deficiencies asserted, or assessments made, against all Sellers as a result of any examinations by any taxing authority have been fully paid. No Seller is a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority. There are no Encumbrances for Taxes upon any of the Purchased Assets nor, to Sellers' Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable). No Seller is a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

Section 4.21 Brokers. Except as set forth on Section 4.21 of the Disclosure Schedules, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of any Seller.

Section 4.22 Full Disclosure. No representation or warranty by any Seller in this Agreement and no statement contained in the Disclosure Schedules or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

Section 4.23 No Other Representation or Warranty. Except for the representations and warranties contained this ARTICLE IV, neither any Seller, nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of any Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Business, the Purchased Assets, or the Assumed Liabilities furnished or made available to Buyer or its Representatives (including any information, documents or material made available to Buyer or its Affiliates in the Dataroom, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to any projections, estimates or budgets of future revenues, future results of operations, future cash flows or future financial condition or success (or any component of any of the foregoing) of the Business or the Purchased Assets, or any representation or warranty arising from statute or otherwise in law, and each Seller hereby disclaims all such other representations or warranties.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers that the statements contained in this ARTICLE V are true and correct as of the date hereof.

Section 5.01 Organization. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware.

Section 5.02 Authority. Buyer has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any Ancillary Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each Ancillary Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

Section 5.03 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

Section 5.04 OFAC Representation. Neither Buyer, nor any of its Affiliates is a Person with whom U.S. Persons are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) (including those named on OFAC’s especially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism), or other governmental action. This Section is material and essential, and any breach or default hereof shall be deemed a total material default under and breach of this Agreement by Buyer.

Section 5.05 Anti-Money Laundering. Neither Buyer, nor any of its respective Affiliates (i) has violated or is in violation of any applicable anti-money laundering Law or (ii) has engaged or engages in any transaction, investment, undertaking or activity that conceals the identity, source or destination of the proceeds from any category of offenses designated in any applicable Law, regulation.

Section 5.06 Litigation. There are no Actions pending or, to the Knowledge of Buyer, threatened in writing against Buyer that, if adversely determined, would reasonably be expected to prevent or materially interfere with Buyer's ability to consummate the transactions contemplated by this Agreement and the Buyer Documents. Buyer is not subject to any Order of any Governmental Authority that would reasonably be expected to prevent or materially interfere with Buyer's ability to consummate the transactions contemplated by this Agreement and the Ancillary Documents.

Section 5.07 Solvency. Buyer is Solvent as of the date of this Agreement. As used in this Section 5.07 the term "**Solvent**" means, with respect to a particular date, that on such date, (a) the sum of the assets, at a fair valuation, of Buyer will exceed its debts, (b) Buyer has not incurred and does not intend to incur, and does not believe that it will incur, debts beyond its ability to pay such debts as such debts mature, and (c) Buyer has sufficient capital and liquidity with which to conduct its business.

Section 5.08 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Buyer.

ARTICLE VI COVENANTS

Section 6.01 Migration.

(a) From and after the Closing, the process of transferring to Buyer those Purchased Assets through which the Business is operated (the "**Seller's ASCAs**"), will begin (the "**Migration Process**"). The Parties agree to work together and provide their best efforts to transfer the Purchased Assets. During the Migration Process, Buyer may initiate a judgment and lien search on any Seller, in its sole discretion. The Parties understand and agree that a specific timeframe to complete Migration Process is difficult to estimate and agree they will use their best efforts to complete the Migration Process prior to the Longstop Date. If the Migration Process is not complete prior to the Longstop Date, Buyer and Seller shall mutually terminate this Agreement in accordance with Section 8.12(a) below.

(b) The Migration Process is successful and complete when (i) each of the actions and conditions set forth in the Migration Process Conditions, attached hereto as Exhibit E, have been completed in accordance with Buyer's instructions and materially consistent with Seller representations or prior Business conditions and no Material Adverse Effect has occurred (a "**Completed Migration**").

(c) During the Migration Process, if, in Buyer's reasonable and good faith determination, a Material Adverse Effect has occurred or does occur, including without limitation, any Amazon Seller Restriction or the removal by Amazon of a substantial amount of reviews related to the Business for any reason, Buyer may terminate this Agreement in accordance with Section 8.12(b) below. This provision is not intended to

permit Buyer the right to terminate this Agreement based on minor changes or fluctuations in the Business, its operations, or the value of the Purchased Assets.

(d) During the Migration Process and for one (1) year period after the Closing Date, unless earlier terminated by Buyer, Buyer and its Affiliates shall be fully responsible and have the authority to direct all changes to any Amazon account associated with the Business and shall have exclusive authority to determine all decisions and actions with regard to such account. Seller agrees to follow the decision-making of Buyers, its Affiliates and personnel with regard to the such accounts, and shall not make any changes, thereto, without prior written consent from Buyer, its Affiliates or personnel.

(e) Prior to the completion of the Migration Process, Sellers may supplement the Disclosure Schedules in writing any information in connection with this Agreement by furnishing such information to Buyer in the form substantially similar to that of the Disclosure Schedules. If, consistent with this Section 6.01, a Completed Migration is achieved, then (i) all such additions or supplements to the Disclosure Schedules shall be deemed for all purposes to modify the Disclosure Schedules, and (ii) the Parties agree to the applicable provisions of this Section 6.01 (in connection with a Completed Migration).

Section 6.02 Confidentiality. From and after the Closing Date, each Seller shall, and shall cause such Seller's Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that such Seller can show that such information (a) is generally available to and known by the public through no fault of such Seller, any Affiliate of such Seller or their respective Representatives; or (b) is lawfully acquired by such Seller, any Affiliate of such Seller or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If any Seller or any Affiliate of such Seller or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information which such Seller is advised by its counsel in writing is legally required to be disclosed, *provided, that* such Seller shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 6.03 Non-Competition; Non-Solicitation.

(a) For a period of three (3) years commencing on the Closing Date (the "**Restricted Period**"), Sellers shall not, and shall not permit any of their Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (iii) cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Business (including any existing or former client or customer of any Seller and any Person that becomes a client or customer of the Business after the Closing), or any other Person who has a material business

relationship with the Business, to terminate or modify any such actual or prospective relationship. Notwithstanding the foregoing, each Seller may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if such Seller is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 5% or more of any class of securities of such Person.

(b) During the Restricted Period, Sellers shall not, and shall not permit any of their Affiliates to, directly or indirectly, hire or solicit any person who is offered employment by Buyer or is or was employed in the Business during the Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees.

(c) Sellers acknowledge that a breach or threatened breach of this Section 6.03 would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by any Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(d) Sellers acknowledges that the restrictions contained in this Section 6.03 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 6.03 should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 6.04 Transition Services. From and after the Closing and until the six-month anniversary of the Closing Date, Sellers shall provide to the Buyer certain transitional services to the Business pursuant to a transitional services agreement, substantially in the form attached hereto as Exhibit F (the “**Transition Services Agreement**”).

Section 6.05 Books and Records. In order to facilitate the resolution of any claims made against or incurred by Seller or Buyer prior to or subsequent to the Closing, or for any other reasonable purpose, for a period of five (5) years after the Closing, Buyer and Sellers shall: (i) retain the Books and Records (including personnel files) relating to periods prior to and subsequent to the Closing in a manner reasonably consistent with the prior practices of the Parties; and (ii)

upon reasonable notice, afford the other Party's Representatives reasonable access (including the right to make photocopies), during normal business hours, to such Books and Records.

Section 6.06 Public Announcements. Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no Party to this Agreement other than Buyer shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other Parties (which consent shall not be unreasonably withheld or delayed), and the Parties shall cooperate as to the timing and contents of any such announcement.

Section 6.07 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction which would not otherwise constitute Assumed Liabilities shall be treated as Excluded Liabilities.

Section 6.08 Receivables. From and after the Effective Date, if any Seller or any Affiliates of any Seller receives or collects any funds relating to any Accounts Receivable or any other Purchased Asset, such Seller or such Affiliate, as applicable, shall remit such funds to Buyer within five Business Days after its receipt thereof.

Section 6.09 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Seller when due. Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

Section 6.10 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the Ancillary Documents.

Section 6.11 Company Name Change. Within five (5) business days after request by Buyer, each Seller which is a corporate entity shall file a certificate of amendment to its articles of incorporation to change its name to a name that is reasonably acceptable to Buyer. Sellers shall notify Buyer in writing when all such name changes are complete, and such notice shall be accompanied by reasonable evidence of the same.

ARTICLE VII INDEMNIFICATION

Section 7.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is twenty-four (24) months from the Closing Date. All

covenants and agreements of the parties contained herein shall survive the Closing. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 7.02 Indemnification By Sellers. Subject to the other terms and conditions of this ARTICLE VII, Sellers shall, jointly and severally, indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of any Seller contained in this Agreement, the Ancillary Documents or in any certificate or instrument delivered by or on behalf of any Seller pursuant to this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by any Seller pursuant to this Agreement, the Ancillary Documents or any certificate or instrument delivered by or on behalf of any Seller pursuant to this Agreement;
- (c) any Excluded Asset or any Excluded Liability;
- (d) any Third Party Claim based upon, resulting from or arising out of the infringement of any of the Intellectual Property Assets; or
- (e) any Third Party Claim based upon, resulting from or arising out of the Business, operations, properties, assets or obligations of Seller or any of its Affiliates (other than the Purchased Assets or Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.

Section 7.03 Indemnification By Buyer. Subject to the other terms and conditions of this ARTICLE VII, Buyer shall indemnify and defend each Seller and each Seller’s Affiliates and their respective Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement;
- (c) any Assumed Liability; or

(d) any Third Party Claim based upon, resulting from or arising out of the ownership and operation of the Purchased Assets conducted or arising following the Closing Date.

Section 7.04 Indemnification Procedures. The party making a claim under this ARTICLE VII is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this ARTICLE VII is referred to as the “**Indemnifying Party**”.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a Party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. Buyer shall have the right to assume the defense of any Third Party Claim at the Indemnifying Party’s expense, and by Buyer’s own counsel, and the Seller shall cooperate in good faith in such defense. In the event that Buyer assumes the defense of any Third Party Claim, subject to Section 7.04(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to Buyer’s exclusive right to elect to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 7.04(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, no Seller shall enter into settlement of any Third Party Claim without the prior written consent of Buyer.

(c) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than twenty (20) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure, or to the extent the Indemnifying Party is materially prejudiced or incurs greater costs as a result of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by giving such information and assistance (including access to the Indemnified Party’s premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 30 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 7.05 Indemnification Payments; Set-off. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE VII, the Indemnifying Party shall satisfy its obligations within twenty (20) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. Any Losses payable to a Buyer Indemnitee pursuant to this ARTICLE VII shall be satisfied: (i) from the aggregate amount of Deferred Payments or Stabilization Payment pursuant to Section 2.06(f); and (ii) from Sellers, jointly and severally, to the extent the amount of Losses exceeds the amounts available to Buyer Indemnitee from such payments provided for in subclauses (i) and (ii).

Section 7.06 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 7.07 Certain Limitations.

(a) Threshold. Except in the case of (i) fraud or intentional misrepresentation, (ii) the breach of any Substantial Representation or (iii) any Excluded Liabilities, for which Sellers shall remain solely and entirely liable pursuant to this Agreement, Buyer

Indemnitees shall have no right to recover Losses with respect to any misrepresentation or breach of warranty or failure to perform any covenant or agreement contained in this Agreement unless and until the aggregate amount of all such Losses exceeds \$50,000 (the “**Indemnification Threshold**”), in which event Sellers shall be required to pay or be liable for all such Losses which exceed the Indemnification Threshold.

(b) Cap. Except in the case of (i) fraud or intentional misrepresentation, (ii) the breach of any Substantial Representation or (iii) any Excluded Liabilities, for which there shall be no Indemnity Cap, the aggregate amount of all Losses for which a Seller shall be liable pursuant to this Article VII shall not exceed thirty percent (30%) of the Purchase Price actually received by Sellers (the “**Indemnity Cap**”). The aggregate amount of Losses for which Buyer shall be liable pursuant to this Article VII shall not exceed an amount equal to the Purchase Price (the “**Buyer’s Indemnity Cap**”).

(c) Offset by Insurance Proceeds. Payments made by an Indemnifying Party pursuant to Section 7.02 or Section 7.03, as the case may be, in respect of any Losses shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received or reasonably expected to be received by each Indemnified Party in respect of any such claim. Each Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement.

(d) No Punitive or Consequential Damages. Except as may result from a Third Party Claim, in no event will an Indemnifying Party be liable to any Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.

(e) Mitigation. Each Party shall act in a commercially reasonable manner in addressing any Losses which may provide the basis for an indemnifiable claim. For avoidance of doubt, each Party shall respond to such liability in the same manner that it would respond to such liability in the absence of the indemnification provided for in this Agreement, and take all commercially reasonable steps to mitigate any Losses upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

Section 7.08 Exclusive Remedies. Subject to Section 2.06, Section 6.03 and Section 8.16, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a Party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any

representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this ARTICLE VII. Nothing in this Section 7.08 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal, or intentional misconduct.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 8.02 Prevailing Party Fees. In the event that any Party institutes any legal suit, action, or proceeding, including arbitration, against the other Party arising out of or relating to this Agreement, the prevailing Party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

Section 8.03 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on Section 8.03 of the Disclosure Schedules (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8.03).

Section 8.04 Wire Transfer Instructions. All amounts payable by Buyer to the Sellers by wire transfer pursuant to this Agreement shall be paid, when due pursuant to the terms of this Agreement, by wire transfer or delivery of other immediately available funds to the account set forth on Section 8.04 of the Disclosure Schedules.

Section 8.05 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Schedules and Exhibits mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and

modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

Section 8.06 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.07 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 8.08 Entire Agreement. This Agreement and the Ancillary Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter, including but not limited to Term Sheet dated August 25, 2020. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 8.09 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, *provided, however*, that prior to the Closing Date, Buyer may, without the prior written consent of Sellers, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 8.10 No Third-Party Beneficiaries. Except as provided in ARTICLE VII, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.11 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that

waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.12 Termination.

(a) Termination Upon Failed Migration. In the event that a Completed Migration has not occurred within a reasonable time following the Closing Date, Buyer and Sellers shall, in good faith, attempt to cure any deficiencies causing such failure. In the event the Parties cannot cure such deficiencies, this Agreement shall be mutually terminated by Buyer and Sellers.

(b) Termination By Buyer.

(i) This Agreement may be terminated by Buyer by written notice to Sellers if, in Buyer's good faith determination in accordance with Section 6.01(c), during the Migration Process, a Material Adverse Effect has occurred or does occur, for any reason.

(ii) In the event that, at the Closing Date, the Sellers have not delivered the Payoff Letter, duly executed by Lender in accordance with Section 2.06(a), Buyers shall have the right to immediately terminate this Agreement upon notice to Sellers.

Section 8.13 Effect of Termination.

(a) In the event of the termination of this Agreement in accordance with Section 8.12(a), (i) the Escrow Agent shall, and shall be directed to return the Escrow Amount to Buyer, less, which shall be released to Sellers, (1) \$100,000, and (2) the sum of all of Sellers' actually incurred out of pocket Liabilities undertaken in furtherance of, or arising from, the transactions contemplated by this Agreement or the Ancillary Documents, including, without limitation, any fees payable to a broker or finder (collectively, (1) and (2) being the "**Termination Fee**") and (iii) this Agreement shall forthwith become void and there shall be no liability on the part of any Party except as provided in ARTICLE VIII or Section 6.02.

(b) In the event of the termination of this Agreement in accordance with Section 8.12(b), (i) the Escrow Agent shall, and shall be directed to, return the Escrow Amount to Buyer and (ii) this Agreement shall forthwith become void and there shall be no liability on the part of any Party except as provided in ARTICLE VIII or Section 6.02.

Section 8.14 Governing Law; Waiver of Jury Trial; Arbitration.

(a) This Agreement including all exhibits and schedules attached hereto shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of laws provisions thereof to the extent such

principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware or any other jurisdiction).

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 8.14(b).

Section 8.15 Mandatory Binding Arbitration. Except as otherwise excluded by this Section 8.15, any Action, controversy, or other dispute regarding, relating to, or arising from this Agreement, the Ancillary Documents, or the transactions contemplated by this Agreement or any Ancillary Document, including any breach or interpretation of this Agreement or any Ancillary Document (each a “**Dispute**”), shall be settled and resolved by binding arbitration in Los Angeles, California, before Judicial Arbitration and Mediation Services, Inc. (“**JAMS**”). The arbitration shall be binding and be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, and, upon request of any party to the Dispute, in accordance with the Expedited Procedures in those Rules, including Rules 16.1 and 16.2. The arbitrator shall serve as a neutral, independent, and impartial arbitrator and shall be selected in accordance with applicable JAMS Rules. The arbitration shall be conducted in accordance with JAMS’ rules and procedures, except as expressly modified by this paragraph. In reaching a decision on any Dispute, the arbitrator shall be bound by the provisions of this Agreement and by the law that the parties have selected to govern the enforcement and interpretation of this Agreement. The arbitrator’s decision on the Dispute shall be a final and binding determination and shall be fully enforceable as an arbitration award in any court having jurisdiction and venue over the parties. The arbitrator shall also award the prevailing party such party’s reasonably attorneys’ fees, and the other party shall pay the arbitrator’s fees and expenses. For such purpose, the arbitrator shall determine the prevailing party. Each party to this Agreement submits to the exclusive jurisdiction of the courts located in Los Angeles, California, for purposes of compelling arbitration or giving legal confirmation of any arbitration award. Each party also agrees to accept service of process for all arbitration proceedings in accordance with JAMS’ rules. Nothing in this paragraph shall prevent any party from (i) seeking and obtaining injunctive or other equitable relief through an action in court; (ii) joining any party as a defendant in any action brought by or against a third party; (iii) bringing an action in any court of competent jurisdiction to (a) collect amounts due under this Agreement or the Ancillary Documents which are either liquidated or not subject to meritorious defense or counter-claim, or (b) to effect any attachment or garnishment; or (iv) bringing an action in court

to compel arbitration as required by this paragraph. Because each party is giving up the right to litigate any Dispute, each party herein further confirms that it has read and understands the provisions in this paragraph, and that it has further benefited from the advice of counsel. By initialing below, each party confirms that it has given specific authorization for this Section and voluntarily and affirmatively agrees to the provisions of this Section. Additionally, each party is voluntarily giving up important constitutional rights to trial by judge or jury, as well as rights to appeal. Each party understands that it has the right to have an independent attorney of its choice review this Section, as well as this entire Agreement prior to initialing below or signing this Agreement.

Section 8.16 Specific Performance. The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity, without the necessity of posting bond therefor, or proving damages in connection therewith.

Section 8.17 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 8.18 Independent Legal Counsel. Each Seller acknowledges, represents, and warrants that neither Buyer nor any legal counsel retained by Buyer have provided any legal, accounting or tax advice to such Seller, and that Buyer and any legal counsel retained by Buyer have encouraged such Seller to consult its own respective legal counsel as to legal, tax and other matters concerning the transactions contemplated by this Agreement. Each Seller agrees and acknowledges that he has had the opportunity to seek advice of independent counsel prior to the execution of this Agreement and has either obtained such advice and counsel or deemed such advice and counsel not necessary.

Section 8.19 Sellers' Representative.

(a) Appointment. Each Seller hereby irrevocably nominates, constitutes and appoints Siufong Wu as his, her or its agent and true lawful attorney in fact (the "**Sellers' Representative**"), with full power of substitution, to act in the name, place and stead of Sellers for purposes of executing any documents and taking any actions that Sellers' Representative may, in his sole discretion, determine to be necessary, desirable or appropriate in connection with such Sellers' Representative's duties and obligations under this Agreement.

(b) Authority. Each Seller hereby grants to Sellers' Representative full authority to execute, deliver, acknowledge, certify and file on behalf of such Seller (in the name of any or all of Sellers or otherwise) any and all documents that Sellers' Representative may, in Sellers' Representative's sole discretion, determine to be necessary, desirable or appropriate, in such forms and containing such provisions as Sellers' Representative may, in Sellers' Representative's sole discretion, determine to be

appropriate, in performing Sellers' Representative's duties as contemplated by this Agreement. Notwithstanding anything to the contrary set forth in this Agreement or in any other agreement executed in connection with the transactions contemplated by this Agreement or the Ancillary Documents: (i) Buyer, each Buyer Indemnitee and each such party's Representatives will deal exclusively with Sellers' Representative on all matters relating to the transactions contemplated by this Agreement or the Ancillary Documents, including without limitation, with respect to any Dispute, or matters arising under Section 8.15; and (ii) Buyer, each Buyer Indemnitee and each such party's Representatives will be entitled to rely conclusively (without further evidence of any kind whatsoever) on any document executed or purported to be executed on behalf of any Seller by Sellers' Representative, and on any other action taken or purported to be taken on behalf of any Seller by Sellers' Representative, as fully binding upon such Seller. Sellers, individually and independently, hereby acknowledge and agree that (x) Sellers' Representative shall be solely responsible for ensuring that each Seller receives that portion of any amount(s) to which such Seller is entitled in connection with the transactions contemplated by this Agreement or the Ancillary Documents and which is paid by Buyer to Sellers' Representative; and (y) Buyer shall bear no obligation or responsibility to any Seller with regard to the obligations of Sellers' Representative relating to the distribution of such payments or otherwise.

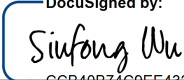
(c) Power of Attorney. Each Seller recognizes and intends that the power of attorney granted in this Section: (i) is coupled with an interest and is irrevocable; (ii) may be delegated by Sellers' Representative; and (iii) shall survive the death, incapacity, dissolution, liquidation or winding up of such of Seller.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

SELLERS:

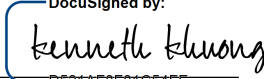
CECILIO MUSICAL INSTRUMENTS, INC.

By: _____ ^{DocuSigned by:}  _____
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Name: Siufong Wu

Title: Shareholder

KK MUSIC STORE, INC.

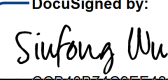
By: _____ ^{DocuSigned by:}  _____
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Name: Kenneth Khuong

Title: Shareholder

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KENNETH KHUONG

_____ ^{DocuSigned by:}  _____
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SIUFONG WU

BUYER:

DAYBREAK DEVELOPMENTS, INC.

By: _____ ^{DocuSigned by:}  _____
052A4472D0274E3...

Name: Michael Fahey

Title: Secretary

EXHIBIT A
FORM OF ESCROW AGREEMENT

EXHIBIT B
FORM OF BILL OF SALE

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT D

FORM OF INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

EXHIBIT E
MIGRATION CONDITIONS

Ref No.	Category	Sales Channel	Requirement	Methodology	Additional Considerations	Conditional for Escrow Release
1 (a)	Account Takeover	Amazon - US/MX & CA (KK Music Store & KKMusicStore)	Buyer will receive primary account access to all of Seller's accounts and have full control	Seller releases the main Username and Password for the Amazon Seller Central account. Buyer will update the account credentials and grant admin access to Seller's secondary email access.	Buyer will replace Deposit and Charge Method information along with any additional business settings, i.e. tax information, business address, etc.	YES
1(b)	Account Takeover	Amazon - US/MX & CA (KK Music Store & KKMusicStore)	Transfer Listing Protection Programs (e.g., Transparency, Brand Registry, etc.)	Seller/Buyer work to transfer all Listing Protection Programs until approved by Amazon.	Any Amazon program designed to protect the listing will be migrated under Buyer's control	NO
1(c)	Account Takeover	Amazon Vendor Central - CA		Seller releases the main Username and Password for the Amazon Vendor Central account. Buyer will update the account credentials and grant admin access to Seller's secondary email access	Buyer can't purchase Vendor Central and will need to evaluate if Vendor Central inventory can be repurposed for Seller Central products. Then will decide on inventory migration plan.	NO
2	Account Transfer	Website	Buyer Takeover of Branded Websites: ceciliomusicstore.com & kkmusicstore.com	Seller releases the main Username and Password for the account. Buyer will update the account	Ensure hosting of site has been transferred	YES

				credentials and remove Seller access.		
2(a)	Account Transfer	eBay	Buyer Takeover of eBay Seller Account	Seller releases the main Username and Password for eBay account.	Seller will have access to co-manage and continue to fulfill orders throughout transition	NO
2(b)	Account Transfer	Walmart	Buyer Takeover of Walmart Seller Account	Seller releases the main Username and Password for Walmart account. Buyer will update the account credentials and remove Seller access.	Seller will have access to co-manage and continue to fulfill orders throughout transition	NO
	Account Transfer	Buy.com	Buyer Takeover of Buy.com Seller Account	Seller releases the main Username and Password for Buy.com account. Buyer will update the account credentials and remove Seller access.	Seller will have access to co-manage and continue to fulfill orders throughout transition	NO
	Account Transfer	New Egg	Buyer Takeover of New Egg Seller Account	Seller releases the main Username and Password for New Egg account. Buyer will update the account credentials and remove Seller access.	Seller will have access to co-manage and continue to fulfill orders throughout transition	NO
3(a)	Inventory	N/A	Confirm Inventory Value	Buyer to validate inventory at Amazon, at 3PL/warehouse, in-transit, and at manufacturer.	Complete validation at Amazon required for escrow release. Units in-transit or at the manufacturer will be needed for full	YES

					Inventory payment release.	
3(a)i	Inventory	N/A	Amazon Inventory	Confirm through Amazon reports in the Seller's Amazon Seller Central Account		YES
3(a)ii	Inventory	N/A	Current Warehouse	Seller will provide Buyer with inventory reports from inventory management system and may perform cycle checks.		YES
3(a)iii	Inventory	N/A	Open POs, Deposits and Unpaid Balances	Confirm via bank accounts, conversations with suppliers, and/or arrival quantities		NO
4	Final Balances	N/A	Fully reconcile closing balances	Establish final balances due to buyer/seller as of the closing date (e.g., Unpaid accumulated Amazon balances, unpaid expenses, etc.)	AR validation will not be a condition for escrow release, but closing balances should be established.	NO
5	Software	N/A	Transfer of 3rd party software	All supporting 3rd party software used by the seller to manage, optimize, monitor, or otherwise support the listing must be transferred to the buyer.	Seller releases the main Username and Password for accounts. Buyer will update the account credentials and remove Seller access.	NO
6	Intellectual Property	N/A	Trademarks, licenses, IP have been transferred to Thrasio in all marketplaces	Buyer to record IP transfer with USPTO in the United States.	Seller works with Thrasio IP Counsel to assign remaining IP in other marketplaces (if	NO

					applicable). Escrow conditionality based on receipt of USPTO submission.	
7	Creative Assets	N/A	Transfer of creative assets	All creative assets pertaining to the business have been shared in working files (pdf, illustrator, etc.) - including but not limited to: artwork, packaging, advertising, mixed media etc.		NO

EXHIBIT F
TRANSITION SERVICES AGREEMENT

EXHIBIT G
PAYOFF LETTER

EXHIBIT H
EIDL BALANCE
Found Below



U.S. Small Business Administration

U.S. SMALL BUSINESS ADMINISTRATION

LOAN NUMBER: [REDACTED] 7803 K K MUSIC STORE

STATEMENT DATE

09/05/20

PAYMENT DUE DATE	INSTALLMENT AMOUNT	AMOUNT NOW DUE
06/28/21	731.00	0.00

DATE OF LAST PAYMENT	AMOUNT OF LAST PAYMENT	AMOUNT TO PRINCIPAL	AMOUNT TO INTEREST	PRESENT PRINCIPAL BALANCE
	0.00	0.00	0.00	150000.00

MAKE YOUR PAYMENT ON-LINE:

1. Go to - <https://www.pay.gov>
2. Search for 1201 Borrower Payments Form
3. Submit payment using 1201 Borrower Payments Form

Payment Mailing Address

Small Business Administration
 PO Box 3918
 Portland, OR 97208-3918

Loan Service Center

Direct questions and correspondence to this address.
 Payments mailed to this address may be returned.

Small Business Administration
 14925 KINGSPOUR ROAD
 FORT WORTH TX 761552243
 Service Office Phone: 800 659-2955

THIS IS A REMINDER THAT BEGINNING 06/28/21 A PAYMENT OF \$731.00 WILL BE DUE ON YOUR SBA DISASTER LOAN.

***** THIS IS NOT A BILL *****

Your loan is in deferment status. No payment amount is currently due, however, interest is accruing on the amount you have received. You may voluntarily make a payment(s) which will reduce the amount of interest that will accrue before your payments are scheduled to begin. Use the attached coupon and return envelope to make a voluntary payment. If you have any questions, please call 800 659-2955.

† Detach here and return lower portion with your remittance. Save upper portion for your records. †



- MAKE PAYABLE TO: SMALL BUSINESS ADMINISTRATION
- IF MAILING YOUR PAYMENT SEND TO THE PAYMENT MAILING ADDRESS LISTED ABOVE
- PLEASE RETURN THIS PORTION OF STATEMENT WITH YOUR PAYMENT
- PUT FULL 10-DIGIT LOAN NUMBER ON ALL PAYMENTS TO ENSURE YOUR ACCOUNT IS CREDITED PROPERLY
- DO NOT SEND CASH
- DO NOT USE TAPE, PAPER CLIPS OR STAPLES

09/05/20

LOAN NUMBER	DUE DATE	INSTALLMENT AMOUNT	AMOUNT NOW DUE	AMOUNT ENCLOSED
[REDACTED] 7803	06/28/21	731.00	0.00	

- PLEASE CHECK HERE AND COMPLETE THE BACK OF THIS FORM IF YOUR ADDRESS HAS CHANGED.
- PLEASE CHECK HERE IF YOUR PHONE NUMBER HAS CHANGED AND CONTACT YOUR LOAN SERVICE CENTER LISTED ABOVE.



K K MUSIC STORE 9030
 8676 ROCHESTER AVE
 RCH CUCAMONGA CA 91730-4905



54647

5218937803 10007310000000000000 7



U.S. SMALL BUSINESS ADMINISTRATION

LOAN NUMBER:

[REDACTED] 7807

CECILIO MUSICAL INSTRUMENTS

STATEMENT DATE

09/05/20

PAYMENT DUE DATE	INSTALLMENT AMOUNT	AMOUNT NOW DUE
06/28/21	731.00	0.00

DATE OF LAST PAYMENT	AMOUNT OF LAST PAYMENT	AMOUNT TO PRINCIPAL	AMOUNT TO INTEREST	PRESENT PRINCIPAL BALANCE
	0.00	0.00	0.00	150000.00

MAKE YOUR PAYMENT ON-LINE:

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2. Search for 1201 Borrower Payments Form
3. Submit payment using 1201 Borrower Payments Form

Payment Mailing Address

Small Business Administration
PO Box 3918
Portland, OR 97208-3918

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Small Business Administration
14925 KINGSPORT ROAD
FORT WORTH TX 761552243
Service Office Phone: 800 659-2955

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09/05/20

LOAN NUMBER	DUE DATE	INSTALLMENT AMOUNT	AMOUNT NOW DUE	AMOUNT ENCLOSED
[REDACTED] 7807	06/28/21	731.00	0.00	<div style="border: 1px solid black; width: 100px; height: 20px;"></div>

- PLEASE CHECK HERE AND COMPLETE THE BACK OF THIS FORM IF YOUR ADDRESS HAS CHANGED.
- PLEASE CHECK HERE IF YOUR PHONE NUMBER HAS CHANGED AND CONTACT YOUR LOAN SERVICE CENTER LISTED ABOVE.



CECILIO MUSICAL INSTRUMENTS 9030
8676 ROCHESTER AVE
RCH CUCAMONGA CA 91730-4905



54648

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EXHIBIT I
AMAZON BALANCE