

Fill in this information to identify the case:

Debtor Frosty Dream, Inc.

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

Case number 24-12072

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>ESR, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	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?	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<u>ESR, LLC</u> <u>Attn: Morris D. Weiss</u> <u>Holland and Knight LLP</u> <u>100 Congress Avenue, Suite 1800</u> <u>Austin, TX 78701</u>	
	Contact phone <u>512-685-6400</u>	Contact phone _____
	Contact email <u>morris.weiss@hklaw.com</u>	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 _____ MM / DD / YYYY	
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**

<b>6. Do you have any number you use to identify the debtor?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor:   __ __ __ __
<b>7. How much is the claim?</b>	\$ <u>2,000,000.00</u> <b>Does this amount include interest or other charges?</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
<b>8. What is the basis of the claim?</b>	<p>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.</p> <p><u>Asset Purchase Agreement - see attached</u></p>
<b>9. Is all or part of the claim secured?</b>	<p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property.</p> <p><b>Nature or property:</b></p> <p><input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i>.</p> <p><input type="checkbox"/> Motor vehicle</p> <p><input type="checkbox"/> Other. Describe: _____</p> <p><b>Basis for perfection:</b> _____</p> <p>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.)</p> <p><b>Value of property:</b> \$ _____</p> <p><b>Amount of the claim that is secured:</b> \$ _____</p> <p><b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)</p> <p><b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____</p> <p><b>Annual Interest Rate</b> (when case was filed) _____ %</p> <p><input type="checkbox"/> Fixed <input type="checkbox"/> Variable</p>
<b>10. Is this claim based on a lease?</b>	<p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. <b>Amount necessary to cure any default as of the date of the petition.</b> \$ _____</p>
<b>11. Is this claim subject to a right of setoff?</b>	<p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____</p>



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:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ \_\_\_\_\_

☐ 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).

\$ \_\_\_\_\_

☐ 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).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ 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 04/02/2024  
MM / DD / YYYY

/s/Henry Smail  
Signature

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

Name Henry Smail  
First name Middle name Last name

Title CEO

Company ESR, LLC  
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 001-310-823-9000

<b>Debtor:</b> 24-12072 - Frosty Dream, Inc.		
<b>District:</b> District of New Jersey, Trenton Division		
<b>Creditor:</b> ESR, LLC Attn: Morris D. Weiss Holland and Knight LLP 100 Congress Avenue, Suite 1800 Austin, TX, 78701  <b>Phone:</b> 512-685-6400 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> morris.weiss@hklaw.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Creditor	
	<b>Other Names Used with Debtor:</b>	
<b>Amends Claim:</b> No <b>Acquired Claim:</b> No		
<b>Basis of Claim:</b> Asset Purchase Agreement - see attached	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 2,000,000.00	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Henry Smail on 02-Apr-2024 5:41:19 p.m. Eastern Time <b>Title:</b> CEO <b>Company:</b> ESR, LLC		

**ATTACHMENT TO PROOF OF CLAIM OF  
ESR, LLC**

*In re Frosty Dream, Inc.*  
Case No. 24-12072-CMG

As provided by Rule 3002(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and section 501(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), ESR, LLC (“**ESR**”) files this attachment to its proof of claim (the “**Proof of Claim**”) in the above-referenced case. In support of the Proof of Claim, ESR states as follows:

1. On February 28, 2024 (the “**Petition Date**”), Thrasio Holdings, Inc. (“**Thrasio**”) and certain of its affiliates (collectively, the “**Debtors**”), including Frosty Dream, Inc. (“**Frosty Dream**”), each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”).

2. On March 6, 2024, the Debtors submitted the *Debtors’ Motion for Entry of an Order (I) Setting Bar Dates for Submitting Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing an Amended Schedules Bar Date and a Rejection Damages Bar Date, (III) Approving the Form, Manner, and Procedures for Filing Proofs of Claim, and (IV) Approving Notice Thereof* [Docket No. 106] (the “**Bar Date Motion**”). A hearing on the Bar Date Motion is currently set for April 3, 2024.

3. ESR as seller, Frosty Dream as buyer, and Thrasio, LLC as guarantor are parties to that certain Asset Purchase Agreement (the “**APA**”) dated January 14, 2022.<sup>1</sup> A true and correct copy of the APA is attached hereto as **Exhibit A**.

4. Pursuant to the APA, Frosty Dream agreed to purchase substantially all of ESR’s assets, including The Hate Stains Company brand of stain- and odor-removing products (“**Hate Stains**”). As consideration for the purchase, the APA contemplated a purchase price as follows:

- a. \$17 million in cash to be paid at closing;
- b. an initial stabilization payment (the “**First Stabilization Payment**”) in the maximum amount of \$3 million should the net revenue earned by the Hate Stains brand equal or exceed \$12 million during the first year following the purchase; and
- c. a second stabilization payment (the “**Second Stabilization Payment**”) in the amount of \$2 million should the net revenue earned by the Hate Stains brand equal or exceed \$15 million during the second year following the purchase.

5. The Hate Stains brand achieved the \$12 million net-revenue threshold for the First Stabilization Payment in the first year following the closing of the APA. ESR received payment of the First Stabilization Payment in June 2023.

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<sup>1</sup> ESR’s principals, Harry Smail, Adam Ross, and Graham Wasilition, are also parties to the APA as part of the Selling Group Party, as that term is defined in the APA.

6. Upon information and belief, the Hate Stains brand achieved the \$15 million net-revenue threshold for the Second Stabilization Payment by the end of the third quarter of 2023, the second year following the closing of the APA. Accordingly, the Second Stabilization Payment was fully earned as of the Petition Date. Frosty Dream has not remitted to ESR payment of the \$2 million Second Stabilization Payment, which constitutes an allowed claim in such amount.

7. Pursuant to the APA, Thrasio, LLC unconditionally guaranteed the punctual performance, observance, and discharge by Frosty Dream of all present and future contingent and non-contingent payment obligations owed or owing by Frosty Dream if and when they become due and payable. Upon any default by Frosty Dream with respect to any of its payment obligations under the APA, including payment of the Second Stabilization Payment, the liability of Thrasio, LLC shall be deemed to have become due and payable.<sup>2</sup>

8. ESR reserves, without limitation, all setoff, recoupment, netting, and similar rights under any applicable contract, statute, common law, or equitable principle. At present, the full amount of such rights is undetermined, and therefore ESR does not state a value for such rights. ESR reserves, without limitation, the right to amend or supplement the Proof of Claim to add such information in the future.

9. ESR and the debtors may also be parties to contracts or agreements not specifically described in this Proof of Claim. ESR accordingly expressly reserves its rights to assert any and all claims under such contracts or agreements.

10. This Proof of Claim is being submitted without prejudice to ESR's rights to assert that any portion of its claim constitutes an administrative-expense claim or that ESR has claims not set forth in this Proof of Claim that may constitute an administrative-expense claim, including, without limitation, for breach of contract.

11. ESR may also have additional prepetition or postpetition claims that are unliquidated as of the date of this Proof of Claim. ESR expressly reserves the right to amend this Proof of Claim to include such claims as they are liquidated.

12. The filing of this Proof of Claim is not and shall not be deemed or construed as:

- a. a waiver of ESR's right to (i) file or otherwise assert a claim for rejection damages under section 502 of the Bankruptcy Code, (ii) file or otherwise assert further administrative expense claims under section 503 of the Bankruptcy Code, or (iii) file or otherwise assert a claim under section 365(b) of the Bankruptcy Code;
- b. if applicable, a waiver of ESR's right to file or otherwise assert a claim under section 502(h) of the Bankruptcy Code;

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<sup>2</sup> For the avoidance of any doubt, ESR does not seek double recovery of the Second Stabilization Payment but reserves all right to claim such amount from either Frosty Dream or, upon default by Frosty Dream, from Thrasio, LLC.

- c. a consent by ESR to the jurisdiction of this court or any other court with respect to these proceedings, if any, commenced in any case against or otherwise involving ESR;
- d. a waiver or release of ESR's right to a trial by jury in this court or any other court in any proceeding as to any and all matter so triable in this court, whether or not the same be designated legal or private rights or in any case, controversy, or proceeding related to this Proof of Claim or the above-referenced bankruptcy case, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution;
- e. a consent by ESR to a jury trial in this Court or any other court in any proceeding as to any and all matters so triable herein in any case, controversy, or proceeding related hereto, pursuant to 28 U.S.C. § 157 or otherwise;
- f. a waiver or release of ESR's right to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by a United States District Court;
- g. a waiver of ESR's rights to move to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection to this Proof of Claim, or other proceeding that may ppbe commenced in this case against or otherwise involving ESR; or
- h. an election of remedies.

SIGNED this 2nd day of April, 2024.

/s/ Harry Smail

By: Harry Smail, CEO

**EXHIBIT A**

**Asset Purchase Agreement**



**ASSET PURCHASE AGREEMENT**

**by and among**

**Frosty Dream, Inc., as Buyer and**

**THRASIO, LLC, as Guarantor**

**and**

**ESR LLC**

**Henry Smail,**

**Adam Ross, and**

**Graham Wasilitation, as Selling Group Parties**

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**Dated as of January 14, 2022**

**EXHIBITS AND DISCLOSURE SCHEDULES**

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 IP Assignment Agreement
Exhibit E	Aggregated Summary of Closing Inventory Statement
Exhibit F	Migration Conditions Addendum
Exhibit G	Seller Wire Instructions
Schedule 1.01(a)(i)	Business Accounts
Schedule 1.01(a)(v)	Acquired Contracts
Schedule 1.01(b)(vii)	Specifically Excluded Assets
Schedule 4.01(b)	Seller Foreign Qualifications
Schedule 4.02(a)(i)	Business Balance Sheet
Schedule 4.02(a)(ii)	Business P&L Statements
Schedule 4.03(g)	Suppliers
Schedule 4.04(a)	Operating Expenses
Schedule 4.04(b)	Marketing Expenses
Schedule 4.07(a)	Existing Contracts
Schedule 4.09(a)	Intellectual Property Assets
Schedule 4.09(b)	Intellectual Property Agreements
Schedule 4.13(b)	Amazon Seller Restriction; Amazon Seller Restriction Notices
Schedule 4.14	Seller Broker Payments
Schedule 9.03	Notices

## ASSET PURCHASE AGREEMENT

This asset purchase agreement (this “**Agreement**”) is dated as of January 14, 2022, and is by and among ESR LLC, a Delaware limited liability company (the “**Seller**”), Henry Smail, an individual (“**Principal 1**”), Adam Ross, an individual (“**Principal 2**”), Graham Wasilition, an individual (“**Principal 3**”, and together with Principal 1 and Principal 2, the “**Principals**” and each a “**Principal**” and the Principals together with the Seller, the “**Selling Group Parties**” and each a “**Selling Group Party**”) and Frosty Dream, Inc., a Delaware corporation (the “**Buyer**”) and Thrasio, LLC, a Delaware limited liability company (“**Guarantor**”). Together, Buyer and the Selling Group Parties shall be referred to herein as the “**Parties**” or each, a “**Party**”.

WHEREAS, the Seller is engaged in the sale and distribution of stain and odor remover category products (including, without limitation, stain remover spray and wipes) under the “Miss Mouth’s Messy Eater”, “Chateau Spill Red Wine”, “Emergency Stain Rescue” and “Hate Stains” brand names (including through the Business Amazon Accounts and the Business Non-Amazon Accounts) (the “**Business**”);

WHEREAS, the Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from the Seller, substantially all the assets, but only certain specified liabilities as provided herein, held by Seller for use in conduct of the Business, subject to the terms and conditions set forth herein; and

WHEREAS, Principals own, directly or indirectly, all of the equity interests in the Seller and will receive a significant benefit as a result of the consummation of the transactions contemplated hereby.

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 1: PURCHASE AND SALE

#### 1.01 Purchase and Sale of Acquired Assets.

(a) **Acquired Assets.** Upon the terms and subject to the conditions contained herein, at the Closing, Seller shall, and to the extent applicable, Principal shall cause Seller to, sell, convey, transfer, assign and deliver to Buyer, free and clear of any Encumbrances, all right, title and interest of every kind and nature and to all assets owned by Seller as of the Closing Date which relate to or are used in connection with Business, be they real or personal, tangible or intangible (including goodwill), fixed or current, wherever located and by whomever possessed, including, all of the following assets, but excluding the Excluded Assets (all of the assets to be sold, conveyed, transferred, assigned and delivered to Buyer hereunder, the “**Acquired Assets**”), including, without limitation, the following:

(i) the Business Accounts and all ASINs (or equivalents outside of the Amazon Online Marketplace) sold therethrough, as set forth on Schedule 1.01(a)(i);

- (ii) the Intellectual Property Assets, as set forth on Schedule 4.09(a);
  - (iii) all Sellable inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories which relate to or are held for use in conduct of 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, in each case as set forth on Closing Inventory Statement (as defined herein) (the “**Inventory**”);
  - (iv) all prepaid expenses, credits, advance payments or security paid by Seller in conduct of the Business as of the Closing Date (including, without limitation, Paid Amounts in respect of all Inventory);
  - (v) all of Seller’s rights, including under warranties, indemnities and similar rights, existing under solely those Existing Contracts set forth on Schedule 1.01(a)(v) and under the Intellectual Property Agreements (the “**Acquired Contracts**”);
  - (vi) all lists, records and other information pertaining to accounts and referral sources, all lists, records and other information pertaining to vendors, suppliers, licensors and customers, all advertising, marketing and promotional materials, and all drawings, diagrams, reports, studies, plans, books, ledgers, files and business and accounting records of every kind (including all financial, business and marketing plans), in each case only as applicable to the Business and whether evidenced in writing, electronic data, computer software or otherwise;
  - (vii) all claims, refunds, credits, causes of action, rights of recovery and rights of set-off of any kind related to the assets set forth in each subclause contained in this Section 1.01(a) (other than those related to Excluded Assets or Excluded Liabilities); and
  - (viii) all goodwill associated with and the going concern value of the Business or any of the Acquired Assets.
- (b) **Further Assurances.** To the extent any assets or property (including any Intellectual Property) owned by an Affiliate of Seller are used in, held for use in, or are reasonably necessary for the continued conduct of the Business (other than the Excluded Assets), they shall be included within the term “Acquired Assets” for purposes hereof as if they would have been so included had they been owned by Seller, and Seller shall cause such Affiliate, to convey such assets and property to Buyer free and clear of all Encumbrances for no additional consideration.

(c) **Excluded Assets**. The following properties, assets, rights and interests of Seller (collectively, the “**Excluded Assets**”) are expressly excluded from the purchase and sale contemplated hereby and as such are not included in the Acquired Assets:

- (i) all cash and cash equivalents, bank accounts and securities of Seller;
- (ii) the Closing Seller Balance;
- (iii) Seller’s rights under or pursuant to the Transaction Documents;
- (iv) all Existing Contracts which are not Acquired Contracts (the “**Excluded Contracts**”);
- (v) any of Seller’s interest in real property, whether leased or owned, including any leasehold or sub-leasehold or other right to use or occupy any interest in real property, including any Contract pursuant to which Seller leases or otherwise has the right to use or occupy any interest in real property;
- (vi) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller, all employee-related or employee-benefit related files or records, and the books and records which Seller is required by applicable Law to retain copies of;
- (vii) off-the-shelf licenses or subscriptions to the extent such licenses or subscriptions are not Acquired Contracts;
- (viii) all assets, contracts and rights of any kind owned or held by the Seller, which are not part of the Acquired Assets and are not used in, held for use in, or are reasonably necessary for the continued conduct of the Business;
- (ix) all Inventory listed on Schedule 1.01(c)(ix) (the “**Excluded Inventory**”); and
- (x) all of the properties, assets, rights of recovery and any other interests, if any, listed on Schedule 1.01(c)(x).

#### **1.02 Assumption of Assumed Liabilities.**

(a) **Assumed Liabilities**. On the terms and conditions set forth in this Agreement, as additional consideration for the Acquired Assets, upon the Closing, Buyer shall assume only the following Liabilities of Seller (the “**Assumed Liabilities**”):

- (i) all Payable Amounts in respect of all Inventory;

- (ii) all executory obligations under the Acquired Contracts required to be paid, performed or otherwise discharged after the Closing Date, but in any event not including any Liability arising from the performance, non-performance, breach or default of or under, any torts related to the performance of, or violation of Law or infringements under, any such Acquired Contracts to the extent occurring or arising, in whole or in part, prior to the Closing;
  - (iii) all Liabilities solely related to or arising out of the operation of the Business or the ownership of the Acquired Assets from and after the Closing Date which are not expressly Excluded Liabilities; and
  - (iv) any additional Liabilities, if any, listed on Schedule 1.02(a)(iv).
- (b) **Excluded Liabilities.** Notwithstanding anything to the contrary in the Transaction Documents and regardless of whether such Liability is disclosed in the Disclosure Schedules or otherwise, Buyer shall not assume or in any way become liable for any Liabilities of Seller, including any such Liabilities arising out of or relating to the Business and/or the Acquired Assets (in each case, other than the Assumed Liabilities), regardless of when or by whom asserted (collectively the “**Excluded Liabilities**”), including, without limitation, the following:
  - (i) all Seller Taxes;
  - (ii) all indebtedness and any guarantees of indebtedness of any Person;
  - (iii) all Seller Transaction Expenses;
  - (iv) all Liabilities under (A) any Acquired Contract, relating to or arising from any breach prior to the Closing, or any event, circumstance or condition first occurring or existing prior to the Closing that with notice, lapse of time or both would constitute or result in a breach by a Selling Group Party of any of its obligations under such Contract or (B) any Excluded Contract;
  - (v) all Liabilities with respect to any of the Excluded Assets;
  - (vi) all Liabilities relating to or arising from any fraudulent conveyance or similar claims made by any third party or any claims made by Seller or any of its Affiliates relating to or arising from the transactions contemplated by the Transaction Documents;
  - (vii) all Liabilities of Buyer arising under any bulk transfer Law or any common law doctrine of defacto merger or successor liability, which is

related to, the result of or arises out of the transactions contemplated hereby and which is not an express Assumed Liability;

- (viii) all Liabilities with respect to any products that were sold by Seller and are subsequently returned to Buyer or otherwise rejected by the purchaser thereof;
- (ix) all Liabilities for product liability occurrences (including occurrences relating to the destruction of property, personal injury or death or any occurrence resulting from any failure to warn or any deficit in design, engineering or construction) with respect to any products manufactured (for or on behalf of Seller) by Seller on or prior to the Closing Date and any resulting claims and litigation arising prior to, on or after the Closing Date;
- (x) all Seller's Liabilities under the Transaction Documents;
- (xi) all Liabilities arising from or relating to the employment, engagement or termination by Seller or any of its Affiliates of any current or former Business Employee (including with respect to any employee benefit plans maintained or sponsored by Seller);
- (xii) all Liabilities arising from or related to Seller's interest in real property, whether leased or owned, including any leasehold or sub-leasehold or other right to use or occupy any interest in real property, including any Liabilities arising from or related to any Contract pursuant to which Seller leases or otherwise has the right to use or occupy any interest in real property; and
- (xiii) all other Liabilities related to or arising out of the operation of the Business or the ownership of the Acquired Assets on or prior to the Closing Date which are not expressly Assumed Liabilities.

- (c) **Seller's Affiliates**. For the purpose of Section 1.02(b), "**Seller**" shall be deemed to include all Affiliates of Seller and any predecessors to Seller and any Person with respect to which Seller is a successor-in-interest (including by operation of Law, merger, liquidation, consolidation, assignment, assumption or otherwise).

**1.03 Purchase Price.** The aggregate amount of consideration payable by Buyer to Seller for the Acquired Assets (except for Inventory, for which the purchase and sale shall be governed by ARTICLE 3) shall be an amount equal to (the "**Purchase Price**");

- (a) \$17,000,000, in cash (the "**Initial Cash Consideration**"); plus
- (b) Stabilization Payment 1, in cash, if earned, pursuant to Section 1.04(c); plus

- (c) Stabilization Payment 2, in cash, if earned pursuant to Section 1.04(d).

**1.04 Payment of Purchase Price.** The Purchase Price shall be paid as follows:

- (a) **Closing Consideration to Migration Escrow Account.** At the Closing, 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 “**Migration Escrow Account**”).
- (b) **Release of Closing Payment Upon Fundamental Migration Completion.** Upon the Fundamental Migration Completion (as set forth in and according to the terms and conditions of ARTICLE 6 and Exhibit F), Buyer shall instruct the Escrow Agent to release the Escrow Amount from the Migration Escrow Account to Seller in accordance with the terms of the Escrow Agreement.
- (c) **Stabilization Payment.** Subject to the terms of Section 8.06, if, at the expiration of First Stability Period the cumulative Net Revenue of the Business during the First Stability Period is:
- (i) between \$7,500,000 and \$9,999,999, then Buyer shall pay to Seller \$1,000,000; or
  - (ii) between \$10,000,000 and \$11,999,999, then Buyer shall pay to Seller \$2,000,000; or
  - (iii) greater than or equal to \$12,000,000, then Buyer shall pay to Seller \$3,000,000 (any such payment owed to Seller pursuant to clauses (i)-(iii) of this Section 1.04(c), the “**Stabilization Payment 1**”); or
  - (iv) *provided, however*, for the avoidance of doubt, in no circumstance shall (1) any payment set forth in Sections 1.04(c)(i) through (iii) be paid more than once and (2) the Stabilization Payment 1 payable to Seller hereunder, in the aggregate, exceed \$3,000,000.
- (d) If, at the expiration of the Second Stability Period the cumulative Net Revenue of the Business during the Second Stability Period is greater than or equal to \$15,000,000, then Buyer shall pay to Seller \$2,000,000 (the “**Stabilization Payment 2**”, and together with Stabilization Payment 1, collectively, the “**Stabilization Payments**”), subject to the terms and provisions of Section 8.06.
- (e) **Timing of Payments.** Any Stabilization Payment payable to Seller under this Section 1.03 shall be paid within ninety (90) days following the end of the fiscal quarter during which such payment has become due and payable, by wire transfer of immediately available funds to an account designated in writing by Seller.



- (f) **Right to Audit.** Upon Seller's written request, Buyer shall give the Seller Group Parties the right to review all records relied upon by Buyer in its calculations to determine any Stabilization Payment due to Seller.

## **ARTICLE 2 CLOSING**

**2.01 Closing.** The closing of the transactions contemplated by this Agreement (the "**Closing**") shall be effected by electronic mail exchange of true, complete and accurate copies of executed originals of this Agreement, Selling Group Parties' Closing Deliverables and Buyer's Closing Deliverables on the date of this Agreement (the "**Closing Date**"). The consummation of the transactions contemplated by this Agreement shall be deemed to occur at 12:01 AM Pacific time on the Closing Date.

**2.02 Selling Group Parties' Closing Deliverables.** In addition to the other requirements set forth in this Agreement, at the Closing, Seller shall deliver or cause to be delivered to Buyer each of the following documents and instruments (collectively, the "**Selling Group Parties' Closing Deliverables**"):

- (a) an escrow agreement, in the form of Exhibit A attached hereto (the "**Escrow Agreement**") and duly executed by Seller;
- (b) a bill of sale, in the form of Exhibit B attached hereto (the "**Bill of Sale**") and duly executed by Seller, transferring all of the tangible personal property included in the Acquired Assets to Buyer;
- (c) an assignment and assumption agreement, in the form of Exhibit C attached hereto (the "**Assignment and Assumption Agreement**") and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Acquired Assets and the Assumed Liabilities, if any;
- (d) an assignment instrument, in the form of Exhibit D attached hereto (the "**IP Assignment Agreement**") and duly executed by Seller, transferring all of Seller's right, title and interest in and to the Intellectual Property Assets to Buyer;
- (e) a data file, which shall be uploaded unto Folder 2j –"Closing Inventory Statement" of the Data Room (the "**Closing Inventory Statement**", an aggregated summary of which is attached hereto as Exhibit E) setting forth, for each SKU of Inventory and with all such data and calculations being as of the Closing Inventory Statement Date:
  - (i) the SKU name;
  - (ii) the Landed Cost per SKU;

- (iii) the estimated number of Sellable units on hand (pursuant to validly executed and accepted purchase orders) at an Amazon Fulfillment Center (for each SKU, the “**Amazon Inventory Units**”);
  - (iv) the estimated number of Sellable units on hand (pursuant to validly executed and accepted purchase orders) at 3PL Fulfillment Centers (for each SKU, the “**3PL Inventory Units**”);
  - (v) the estimated number of units in transit and ordered pursuant to a validly executed and accepted purchase order (for each SKU, the “**Inventory In-Transit Units**”);
  - (vi) the estimated number of units ordered and in production pursuant to a validly executed and accepted purchase order (for each SKU, the “**Inventory In-Production Units**”);
  - (vii) the aggregate Landed Cost of all Amazon Inventory Units (for each SKU, the “**Amazon Inventory Value**”);
  - (viii) the aggregate Landed Cost of all 3PL Inventory Units (for each SKU, the “**3PL Inventory Value**”);
  - (ix) a true, complete and correct accounting of any and all Paid Amounts and Payable Amounts in respect of the Amazon Inventory Units, the 3PL Inventory Units, the Inventory In-Transit Units and the Inventory In-Production Units (including, the extent applicable, lead times and anticipated completion or delivery dates with respect to such orders);
  - (x) the Closing Inventory Value;
  - (xi) all data, inputs and financial elements in respect of the foregoing clauses (i)-(x) which are used to determine the Closing Inventory Value;
- (f) a consulting agreement (the “**Consulting Agreement**”), duly executed by Principal 1; and
- (g) 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.

**2.03 Buyer’s Closing Deliverables.** In addition to the other requirements set forth in this Agreement, at the Closing, Buyer shall deliver or cause to be delivered to the Selling Group Parties, as applicable (collectively, the “**Buyer’s Closing Deliverables**”):

- (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 IP Assignment Agreement, duly executed by Buyer; and
- (e) the Consulting Agreement, duly executed by Buyer or one of Buyer's Affiliates.

**2.04 Allocation of Purchase Price.** The Selling Group Parties and Buyer agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be correctly allocated among the Acquired 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 Seller within forty-five (45) days following the Closing Date, for Seller's review and confirmation. Following mutual agreement of the Buyer and Seller on the final Allocation Schedule, Buyer and Seller shall file all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with the Allocation Schedule.

**2.05 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; provided, however, that prior to making any such deduction or withholding, Buyer shall provide, to the extent reasonably practicable, at least thirty (30) days' written notice to Seller before deducting or withholding any such Taxes. All such withheld amounts shall be treated as delivered to Seller hereunder.

**2.06 Third Party Consents.** To the extent that Seller's rights under any Contract or Permit constituting a Acquired Asset, or any other Acquired 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 Seller, at its 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 Acquired Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by law and the Acquired Asset, shall act 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 Acquired Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer.

### **ARTICLE 3**

#### **PURCHASE AND SALE OF INVENTORY**

**3.01 Closing Inventory Payment.** At the Closing, Buyer shall pay to Seller by wire transfer of immediately available funds an amount equal to the sum of (i) the Aggregate Amazon Inventory Value (as stated on the Closing Inventory Statement); (ii) the Inventory In-Transit Advance (as stated on the Closing Inventory Statement); and (iii) the Inventory In-Production

Advance (as stated the Closing Inventory Statement, and subclauses (i)-(iii) collectively, the “**Closing Inventory Payment**”). Seller covenants and agrees to remit the Inventory In-Transit Advance and Inventory In-Production Advance to the relevant suppliers, manufacturers or freight-forwarders, as applicable, on behalf of Buyer within three (3) days of the Closing.

### **3.02 Post-Closing Inventory Value Verification.**

- (a) Post-Closing Verification Period. Following the Closing, Buyer shall coordinate and conduct, in consultation and with the cooperation of the Selling Group Parties, a physical count, audit or electronic verification (as applicable and to the furthest extent possible) of the Inventory (including all data, inputs and financial elements which are used to determine the Closing Inventory Value), using methodology consistent with GAAP principles and commercially reasonable procedures sufficient to produce a true, correct, accurate and verified Closing Inventory Value of the Inventory which was actually transferred to the Buyer at the Closing (the “**Verified Inventory Value**”).
- (b) Post-Closing Inventory Statement. No later than forty-five (45) days from the Closing Date, Buyer or its Representatives shall prepare and deliver to Seller a data file (the “**Post-Closing Inventory Statement**”), which shall be prepared in accordance with Section 3.02(a) and shall set forth Buyer’s calculation of the Verified Inventory Value. The Post-Closing Inventory Statement shall be prepared as an update, supplementation or revision, to the extent necessary and in accordance with Section 3.02(a), of the Closing Inventory Value as calculated and set forth on the Closing Inventory Statement.

**3.03 Post-Closing Inventory Payment.** Upon Seller’s written acceptance of the Post-Closing Inventory Statement or, if applicable, the close of the Inventory Review Period pursuant to Section 3.04, Buyer shall pay to Seller by wire transfer of immediately available funds an amount equal to (i) the Verified Inventory Value; minus (ii) the Aggregate Amazon Inventory Value (the “**Post-Closing Inventory Payment**”).

### **3.04 Inventory Review Period.**

- (a) After receipt of the Post-Closing Inventory Statement, Seller shall have ten (10) days (the “**Inventory Review Period**”) to review the Post-Closing Inventory Statement. On or prior to the last day of the Inventory Review Period, Seller may object to the Post-Closing Inventory Statement by delivering to Buyer a written statement setting forth Seller’s objections in reasonable detail, indicating each disputed item or amount and the basis for Seller’s disagreement therewith (the “**Inventory Statement of Objections**”). If Seller fails to deliver the Inventory Statement of Objections before the expiration of the Inventory Review Period, the Post-Closing Inventory Statement and the Post-Closing Inventory Payment, as the case may be, reflected in the Post-Closing Inventory Statement shall be

deemed to have been accepted by Seller. If Seller delivers the Inventory Statement of Objections before the expiration of the Inventory Review Period, Buyer and Seller shall negotiate in good faith to resolve such objections within fifteen (15) days after the delivery of the Inventory Statement of Objections (the “**Inventory Resolution Period**”), and, if the same are so resolved within the Inventory Resolution Period, Post-Closing Inventory Payment, as the case may be, the and the Post-Closing Inventory Statement with such changes as may have been previously agreed in writing by Buyer and Seller, shall be final and binding.

- (b) If Seller and Buyer fail to reach an agreement with respect to all of the matters set forth in the Inventory Statement of Objections before the expiration of the Inventory Resolution Period, then with regard to only those amounts remaining in dispute (the “**Disputed Inventory Amounts**”), Buyer and Seller shall appoint by mutual agreement the office of an impartial and independent nationally recognized firm of independent certified public accountants (the “**Independent Accountants**”) who, acting as experts and not arbitrators, shall resolve the Disputed Inventory Amounts only and make any adjustments to the Post-Closing Inventory Payment, as the case may be, and the Post-Closing Inventory Statement. The Independent Accountants shall only decide the specific items under dispute by the Parties and their decision for each Disputed Inventory Amount must be within the range of values assigned to each such item in the Post-Closing Inventory Statement and the Inventory Statement of Objections, respectively.
- (c) 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 Inventory Amounts and their adjustments to the Post-Closing Inventory Statement and/or the Post-Closing Inventory Payment shall be conclusive and binding upon the Parties.
- (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 Sellers or Buyer, respectively, bears to the aggregate amount actually contested by Sellers and Buyer.
- (e) Any positive adjustments to the Post-Closing Inventory Statement and/or the Post-Closing Inventory Payment resulting from the resolution of the Independent Accountants shall be paid to Sellers within five (5) Business Days of the resolution of any Disputed Inventory Amounts.

#### **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES OF SELLING GROUP PARTIES**

Except as set forth in the correspondingly numbered sections or subsections of the Disclosure Schedules attached hereto, each of which shall qualify only the specifically identified sections or subsections hereof to which such Disclosure Schedule relates and shall not qualify any other provision of the Transaction Documents, each Selling Group Party, jointly and severally, represents and warrants to Buyer that the following statements are true and correct as of the Closing:

**4.01 Organization; Authority; No Conflicts.**

- (a) **Organization**. Seller is duly organized, validly existing and in good standing (except to the extent the failure to be in good standing would not be material to Seller) under the Laws of Delaware and has all requisite 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.
- (b) **Foreign Qualifications**. Seller is duly qualified or otherwise authorized as a foreign entity to transact business in each jurisdiction listed on Schedule 4.01(b), which are all of the jurisdictions in which ownership of the Acquired Assets or operation of the Business as currently conducted requires Seller to so qualify, except to the extent that failure to be so qualified would not have a material effect on the Business.
- (c) **Seller Authority**. Seller has all requisite power and authority to (i) execute, deliver and perform its obligations under the Transaction Documents to which it is a party and (ii) consummate the transactions contemplated hereby and thereby. The execution and delivery of the Transaction Documents to which Seller is or will be a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been or will be duly authorized. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer and the other Selling Group Parties) constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms.
- (d) **Principal Authority**. Principals have all requisite capacity to execute and deliver this Agreement and any other Transaction Document to which they are a party. This Agreement has been duly executed and delivered by each Principal, and (assuming due authorization, execution and delivery by Buyer and the other Selling Group Parties) constitutes a legal, valid and binding obligation of each Principal enforceable against each Principal in accordance with its terms.
- (e) **No Conflicts; Consents**. The execution, delivery and performance by Seller of the Transaction Documents, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (i) 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

Seller; (ii) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to any Selling Group Party, the Business or the Acquired Assets; (iii) 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 Existing Contract or Permit to which Seller is a party or by which Seller or the Business is bound or to which any of the Acquired Assets are subject (including any Acquired Contract); or (iv) result in the creation or imposition of any Encumbrance on the Acquired Assets. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller or the Business in connection with the execution and delivery of any Transaction Document and the consummation of the transactions contemplated hereby and thereby.

#### **4.02 Financial Statements.**

- (a) **Financial Statements.** Schedule 4.02(a) sets forth a true, correct, current, and complete copy of the unaudited balance sheet of the Business (the “**Balance Sheet**”) as of November 30, 2021 (the “**Balance Sheet Date**”). Schedule 4.02(a) sets forth a true, correct, and complete copy of unaudited year to date profit and loss statements of the Business through the Balance Sheet Date and for the prior two (2) calendar years (the “**P&L Statements**” and together with the Balance Sheet, the “**Financial Statements**”).
- (b) **Financial Statements Standards.** The Financial Statements (including the notes and schedules thereto) (i) have been prepared in accordance with the Accounting Standards, and on a consistent basis throughout the period involved, subject to normal and recurring year-end adjustments; (ii) are based on the books and records of the Business; and (iii) fairly represent, in all respects, the financial condition of the Business as of the respective dates they were prepared and the performance and operations of the Business for the periods indicated.

#### **4.03 Supply Chain.**

- (a) **Quality and Ownership of Inventory.** All Inventory (except for raw materials and work in progress and packaging, supplies and parts that are not finished goods) is and of a quality no less than the quality of finished goods and other inventories maintained by Seller in connection with the Business in the ordinary course of business consistent with past practice and is merchantable and fit for the purpose for which it was procured or manufactured, and is Sellable. To Seller’s Knowledge, all other Inventory, including, without limitation, raw materials, work in progress, packaging, supplies and parts is and of a quality no less than the quality of finished goods and other inventories maintained by Seller in connection with the

Business in the ordinary course of business consistent with past practice and is merchantable and fit for the purpose for which it was procured or manufactured, and is Sellable. All Inventory (i) is owned by Seller, free and clear of any Encumbrances; (ii) was acquired in the ordinary course of business consistent with past practice; and (iii) is not held by Seller on a consignment basis.

- (b) **Purchase Orders**. The Closing Inventory Statement contains a true, current and complete accounting of all purchase orders for any Inventory for the two (2) calendar years prior to Closing (including, the extent applicable, lead times and anticipated completion or delivery dates with respect to such orders) (the “**Purchase Orders**”). Seller has provided true, correct and complete copies of the Purchase Orders to Buyer.
- (c) **Payable Amounts**. The Closing Inventory Statement sets forth an accurate, current and complete list of all Payable Amounts in respect of all SKUs of Inventory. All Payable Amounts (i) are reflected accurately and properly, in all material respects, on Seller’s books and records, including the Financial Statements; (ii) are valid; and (iii) have arisen in bona fide arm’s-length transactions in the ordinary course of business.
- (d) **Paid Amounts**. The Closing Inventory Statement sets forth a true, current and complete list of all Paid Amounts in respect of all SKUs of Inventory. All Paid Amounts (i) are reflected accurately and properly, in all material respects, on its books and records, including the Financial Statements; (ii) are valid; and (iii) have arisen in bona fide arm’s-length transactions in the ordinary course of business. Prior to the Closing, Seller has paid the Paid Amounts and other accounts payable of the Business on a timely basis when due.
- (e) **Landed Cost**. The Closing Inventory Statement sets forth the true and correct Landed Cost for each SKU of Inventory and all the data which correctly and completely substantiates the Landed Cost for each SKU of Inventory (as reflected in the Closing Inventory Statement) and, in all material respects, fairly represents the information contained in the Financial Statements and in the Purchase Orders.
- (f) **Suppliers**. Schedule 4.03(f) sets forth (i) a true, complete and accurate list of each vendor and supplier of the Business (each, a “**Supplier**”), ordered from largest to smallest by the aggregate dollar value of purchases by Seller during the two (2) most recent fiscal years and (ii) with respect to each Supplier, the aggregate dollar value of purchases during each such fiscal year. Any Contracts existing between Seller and Suppliers are listed as Existing Contracts on Schedule 4.07(a). To Seller’s Knowledge, no Supplier has ceased, or intends to cease, to supply goods or services to the Business or to otherwise terminate, materially change pricing terms or materially reduce its relationship with the Business.



#### 4.04 Business Expenses.

- (a) **Operating Expenses.** Schedule 4.04(a) contains a true, correct, current and complete list of all operating expenses incurred by Seller in conduct of the Business during 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 “**Operating Expenses**”).
- (b) **Marketing Expenses.** Schedule 4.04(b) contains a true, correct, current and complete list of all marketing channels (including, but not limited to, Amazon, Facebook and Google) or other partners to whom Seller, in conduct of the Business, has paid an aggregate amount of \$1,000 or more during the twelve months prior to the Closing Date and specifies the aggregate amount spent on each such marketing channel or other partner, in each instance (collectively, the “**Marketing Expenses**”).

**4.05 Undisclosed Liabilities.** 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.

**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 on the Business; nor (b) a material change in cash management practices and policies, practices and procedures with respect to inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue or acceptance of customer deposits of the Business.

#### 4.07 Contracts.

- (a) **Existing Contracts.** Schedule 4.07(a) lists all Contracts (i) by which any of the Acquired Assets are bound or affected or (ii) to which any Selling Group Party is a party or by which any Selling Group Party is bound in connection with the Business or the Acquired Assets (collectively, the “**Existing Contracts**”). Complete and correct copies of each Existing Contract have been made available to Buyer.
- (b) **Acquired Contracts.** Each of the Acquired Contracts set forth on Schedule 1.01(a)(v) is valid and binding on the applicable Selling Group Party in accordance with its terms and is in full force and effect. No Selling Group Party

nor 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 any intention to terminate, any Acquired Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Acquired 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.

**4.08 Acquired Assets.** Seller has good and valid title to, or a valid right to use, all of the Acquired Assets, free and clear of any and all Encumbrances. The Acquired Assets are all of the assets which are necessary to enable to the Business to be conducted immediately after the Closing in substantially the same manner that the Business has been conducted for the twelve (12) month period prior to the Closing.

**4.09 Intellectual Property.**

(a) **Intellectual Property Assets.** Schedule 4.09(a) contains a correct, current and complete list of all Intellectual Property Assets (other than the Intellectual Property Agreements), including:

- (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) **Intellectual Property Agreements.** Schedule 4.09(b) 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. Seller has 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 Seller 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) Title to Intellectual Property Assets; No Conflicts.**

- (i) Seller is 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 has the valid and enforceable right to use all other Intellectual Property used, 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 (other than license or subscription terms relating to off-the-shelf licenses or subscriptions).
- (ii) Except as set forth at Disclosure Schedule 4.09(c)(ii), Seller has entered into binding, valid and enforceable written Contracts with each and any Business Employee whereby such Business Employee (A) 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 Seller; (B) grants to Seller a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property; and (C) irrevocably waives any right or interest, including any moral rights, regarding such Intellectual Property, to the extent permitted by applicable Law. Seller has provided Buyer with true and complete copies of all such Contracts.
- (iii) Neither the execution, delivery or performance of any Transaction Document, 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, the Buyer's right to own or use any Intellectual Property Assets or any Intellectual Property subject to any Intellectual Property Agreement.

- (d) Validity of Intellectual Property Assets.** 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. Seller has taken reasonable steps to maintain and enforce the Intellectual Property Assets and all Intellectual Property subject to any Intellectual Property Agreement and to preserve the confidentiality of all Trade Secrets included in the Intellectual Property Assets. 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.

- (e) **No Infringement.** Except as set forth at Disclosure Schedule 4.09(e), the conduct of the Business as currently and formerly conducted and as proposed to be conducted after the Closing in a substantially similar manner as conducted by Seller prior to the Closing, 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.
- (f) **Intellectual Property Proceedings.** 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) 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.

**4.10 Legal Proceedings; Governmental Orders.** There are no Actions related to the Business or the Acquired Assets pending or, to Seller's Knowledge, threatened against or by any Selling Group Party and, to Seller's Knowledge, 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 pending, adjudicated or otherwise relating to or affecting the Business or the Acquired Assets.

#### **4.11 Compliance With Laws; Permits.**

- (a) Except as set forth at Disclosure Schedule 4.11(a), Seller has materially complied, and is now materially 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 Acquired Assets. All Permits required for Seller to conduct the Business as currently conducted or for the ownership and use of the Acquired Assets have been

obtained by Seller 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. Seller has 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 Acquired Assets, including the names of the Permits and their respective dates of issuance and expiration. Except as set forth at Disclosure Schedule 4.11(a), 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. Seller has never received any notice or other communication (whether oral or written) from any Governmental Authority regarding any (i) material violation of, or failure to comply with, any Law applicable to the operation of the Business, or (ii) any actual or alleged obligation on the part of 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 Acquired Assets.

- (b) Seller has materially 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 Seller in the conduct of the Business has only included the ingredients set forth on the labels of such product.

**4.12 Data Protection; PCI Compliance.** To Seller's Knowledge, 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). To Seller's Knowledge, 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.

**4.13 Amazon Compliance.**

- (a) **Amazon TOS.** Except as set forth at Disclosure Schedule 4.13(a), Seller has at all times remained in compliance with the terms of service, conditions of use, and any and all other rules, policies, agreements or arrangements (including click-through arrangements) imposed by Amazon and the Amazon Online Marketplace

upon third-party Sellers, except to the extent such non-compliance did or does not have a Material Adverse Effect on the Business.

- (b) **Amazon Seller Restrictions.** Schedule 4.13(b) sets forth a true, complete and accurate list of all Amazon Seller Restrictions which have been imposed on any Business Amazon Account and any Amazon Seller Restriction Notices which have been delivered to any Selling Group Party during the three (3) years prior to the Closing Date. As of the Closing Date, there is no Amazon Seller Restriction in effect, pending or, to Seller's Knowledge, threatened against any Amazon Business Account and, to Seller's Knowledge, no event has occurred, or circumstances exist that may give rise to, or serve as a basis for, any Amazon Seller Restriction.

**4.14 No Brokers.** Schedule 4.14 sets forth any and all Seller obligations to any broker, finder or investment banker entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by any Transaction Document based upon arrangements made by or on behalf of Seller (such fees or commissions, the "**Seller Broker Payments**"). For the avoidance of doubt and pursuant the terms and conditions of Section 1.02(b), Seller Broker Payments are deemed to be Seller Transaction Expenses and are expressly Excluded Liabilities for which Buyer shall bear no responsibility.

**4.15 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 Selling Group Party with respect to the Business (whether or not shown on any Tax Return) have been, or will be, timely paid by such Selling Group Party. Each Selling Group Party 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 Selling Group Party. All deficiencies asserted, or assessments made, against all Selling Group Parties 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 Acquired Assets nor, to Seller's Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Acquired Assets (other than for current Taxes not yet due and payable). No Selling Group Party is a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

**4.16 Full Disclosure.** No representation or warranty by any Selling Group Party in any Transaction Document and no statement contained in the Disclosure Schedules or any certificate or other document furnished or to be furnished to Buyer pursuant to the Transaction Documents 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.

**4.17 No Other Representations.** Except for the representations and warranties contained in this ARTICLE 4 (including the related portions of the Disclosure Schedules), no Selling Group Party nor any Representative of the same has made and does not make any other express or implied representations or warranties, either written or oral, in relation to Seller, the Business, the Acquired Assets, the Assumed Liabilities, or any other matter contained in this Agreement, including any representation or warranty as to the accuracy or completeness of any information regarding the Business and the Acquired Assets furnished or made available to Buyer and its representatives (including any disclosures made by any Person to Buyer and any information, documents or material delivered to Buyer or made available to Buyer in in any data room, discussions or in any other form in expectation of the transactions contemplated hereby.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to each Selling Group Party that the following statements are true and correct as of the Closing.

### **5.01 Organization; Authority; No Conflicts.**

- (a) **Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware.
- (b) **Authority.** Buyer has all requisite power and authority to (i) execute, deliver and perform its obligations under the Transaction Documents to which it is a party and (ii) consummate the transactions contemplated hereby and thereby. The execution and delivery of the Transaction Documents to which Buyer is or will be a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the consummate the transactions contemplated hereby and thereby have been or will be duly authorized. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by the Selling Group Parties) constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms.
- (c) **No Conflicts; Consents.** The execution, delivery and performance by Buyer of the Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (i) 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; (ii) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (iii) 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 the Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

**5.02 Sufficiency of Funds.** Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by the Transaction Documents.

## **ARTICLE 6**

### **MIGRATION PERIOD COVENANTS**

#### **6.01 Migration.**

- (a) **Migration Period.** As soon as reasonably practicable following the Closing and until such time that a Migration Completion (as defined herein) has been achieved (such period, the “**Migration Period**”), the Parties shall work together in good faith and using best efforts to complete migration of the Business and of the Acquired Assets to Buyer subject to the terms and conditions of this ARTICLE 6. The Parties acknowledge and agree that Exhibit F attached hereto (the “**Migration Conditions Addendum**”) sets forth the terms and conditions of certain covenants, agreements, actions, services or processes which the Parties shall take during the Migration Period, specifically:
- (i) those covenants, agreements, actions, services or processes which are fundamental to the achievement of Buyer’s ability to own, control and independently manage and operate the Business and Acquired Assets (each, as designated on the Migration Conditions Addendum, an “**Escrow Release Condition**”); and
  - (ii) those actions, services or processes which are necessary to achieve a full migration of the Business and the Acquired Assets to Buyer but are not Escrow Release Conditions (each, as designated on the Migration Conditions Addendum, a “**General Migration Condition**” and together with the Escrow Release Conditions, the “**Migration Conditions**”).
- (b) **Fundamental Migration Completion; Release of Escrow Amount.** Upon joint confirmation by Buyer and Seller of the completion of each Escrow Release Condition (such event, the “**Fundamental Migration Completion**”), Buyer shall instruct the Escrow Agent to release the Escrow Amount from the Migration Escrow Account to Seller in accordance with the terms of the Escrow Agreement.
- (c) **Migration Completion.** Following the Fundamental Migration Completion, the Parties shall continue to work in good faith and use best efforts to complete the



General Migration Conditions. Upon the joint confirmation by Buyer and Seller of each of the Migration Conditions, a “**Migration Completion**” shall be deemed to have occurred.

- (d) **Pre-Closing Completion of Migration Conditions.** Any Migration Condition which, by the terms and conditions of the Migration Conditions Addendum, may be completed prior to Closing and actually is completed prior to the Closing (subject to confirmation by Buyer) shall be designated as completed on the Migration Conditions Addendum and deemed completed for the purposes of this Agreement.
- (e) **Timing of Migration Conditions.** The Parties acknowledge and agree that the Parties shall work in good faith to complete each Migration Condition (including the Escrow Release Conditions) within the timeframe (e.g., in days, months) set forth as an estimate on the Migration Conditions Addendum; *provided, however*, that such expectations are expressly Buyer’s good faith estimate based on Buyer’s past practices and, notwithstanding anything contained in any Transaction Document to the contrary, shall have no binding effect on the release of the Escrow Amount or the satisfaction of any Migration Condition under this Agreement.
- (f) **Control of Business Accounts Following Closing.** Except as provided at Section 6.01(G), from and after the Closing, Buyer or its Affiliates shall have the authority to direct all changes to all Business Accounts and shall have exclusive authority to make all decisions and determine all actions with regard to such accounts. Each Selling Group Party covenants and promises to follow the direction and take all actions requested of them by Buyer, its Affiliates and personnel with regard to any Business Account, and shall not make any changes, thereto, without the prior written consent from the Buyer, its Affiliates or personnel.
- (g) **Restrictions on Control of Business Accounts.** From and after the Closing through the Escrow Agent’s release of the Escrow Amount in accordance with Section 1.04(b) above, Buyer shall not make any changes to the Business, Acquired Assets, or the Business Accounts, other than the changes required to effectuate the transfer of ownership and to reach a Completed Migration or to operate the Business in the ordinary course, as compared to its pre-Closing operation or consistent with industry standards, without Sellers’ prior written consent.

**6.02 Transition Services.** Each Selling Group Party agrees to provide, or to cause their respective Affiliates to provide certain support tasks or processes designated as “Transition Services” on the Migration Conditions Addendum to Buyer for the respective periods and on the other terms and conditions set forth on the Migration Conditions Addendum. The Parties acknowledge and agree that no additional compensation will be paid to such parties for any of the services and support provided to Buyer or its Affiliates, and that all such services and support are included in the Purchase Price paid by Buyer.

### **6.03 Closing Seller Balance; Post-Closing Reconciliation.**

- (a) **Closing Seller Balance.** Within thirty (30) days of the Closing Date, Buyer shall pay to Seller the Closing Seller Balance by wire transfer of readily available funds to an account designated in writing by Seller.
- (b) **Post-Closing Reconciliation.** From and after the Closing Date:
  - (i) if Buyer receives or collects any funds relating to any accounts receivable of the Business or any other proceeds related to any Acquired Asset arising from conduct of the Business prior to the Closing, Buyer shall remit such funds to Seller within (5) five Business Days after its receipt thereof; and
  - (ii) if any Selling Group Party or of their Affiliates receive or collect any funds relating to any accounts receivable of the Business or any other proceeds related to any Acquired Asset arising from conduct of Business after the Closing, such Selling Group Party or Affiliate, as applicable, shall remit such funds to Buyer within five (5) Business Days after its receipt thereof.
- (c) **Reimbursable Expenses.** Buyer agrees to reimburse the Sellers for all reasonable and necessary business expenses incurred or expended by them in connection with the performance of the Transition Services set forth on the Migration Conditions Addendum upon presentation of proper expense statements or vouchers or such other supporting information as the Buyer may reasonably require of the Sellers. At the conclusion of each month from the Closing Date until Transition Services are no longer required pursuant to the terms of the Migration Conditions Addendum, upon presentation of proper expense statements or vouchers or such other supporting information as the Buyer may reasonably require of the Sellers, Buyer shall reimburse such expenses by wire transfer of readily available funds to an account designated in writing by Sellers.

## **ARTICLE 7 GENERAL COVENANTS**

### **7.01 Restrictive Covenants.**

- (a) **Confidentiality.** From and after the Closing Date, each Selling Group Party shall, and shall cause such Selling Group Party's Affiliates to, hold, and shall use its reasonable best efforts to cause its Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that such Selling Group Party can show that such information (a) is generally available to and known by the public through no fault of such Selling Group Party, any Affiliate of such Selling Group Party or its Representatives; or

(b) is lawfully acquired by such Selling Group Party, any Affiliate of such Selling Group Party or its 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 Selling Group Party or any Affiliate of such Selling Group Party or its Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such Selling Group Party 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, however*, that such Selling Group Party shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

- (b) **Non-Competition.** For a period of two (2) years commencing on the Closing Date (the “**Restricted Period**”), the Selling Group Parties shall not, and shall not permit any of their Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in a Restricted Business; (ii) have an interest in any Person that engages directly or indirectly in a 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 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 Selling Group Party may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if such Selling Group Party 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.
- (c) **Non-Solicitation.** During the Restricted Period, the Selling Group Parties 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.
- (d) **No Public Announcements.** Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no Party hereto shall make any public announcements in respect of the Transaction Documents or the transactions contemplated thereby or otherwise communicate with any news media without the prior written consent of the other Party (which consent shall not

be unreasonably withheld or delayed), and the Parties shall cooperate as to the timing and contents of any such announcement.

- (e) **Equitable Relief**. The Selling Group Parties acknowledge that a breach or threatened breach of this Section 7.01 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 Selling Group Party 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).
- (f) **Material Inducement**. The Selling Group Parties acknowledge that the restrictive covenants contained in this Section 7.01 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into the Transaction Documents and consummate the transactions contemplated hereby and thereby. In the event that any covenant contained in this Section 7.01 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.

**7.02 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 Seller 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.

**7.03 Wrong Pocket Provision.** If, at any time following the Closing (including following a Migration Completion):

- (a) a Selling Group Party becomes aware that any Acquired Asset which should have been transferred to Buyer pursuant to the terms of the Transaction Documents was not transferred to Buyer as contemplated by the Transaction Documents,

then Seller shall promptly transfer or cause its Affiliates to transfer such Acquired Asset to Buyer for no additional consideration;

- (b) a Selling Group Party becomes aware that any Assumed Liability was not assumed by Buyer as pursuant to the terms of the Transaction Documents, then the Selling Group Parties shall promptly notify Buyer and the Parties shall each use reasonable efforts to resolve the ownership of such Assumed Liability by written agreement;
- (c) Buyer becomes aware that any Excluded Asset which should have been retained by Seller pursuant to the terms of the Transaction Documents was transferred to Buyer, then Buyer shall promptly transfer or cause its Affiliates to transfer such Excluded Asset to Seller for no additional consideration; and
- (d) Buyer becomes aware that any Excluded Liability (whether arising prior to, at or following the Closing) was assumed by Buyer, then Buyer shall promptly notify the Selling Group Parties and the Parties shall each use reasonable efforts to resolve the ownership of such Excluded Liability by written agreement.
- (e) For the avoidance of doubt, to the extent any action is taken pursuant to this Section 7.03 to ensure that either (a) any Acquired Asset or Excluded Asset is owned or (b) any Assumed Liability or Excluded Liability is assumed by the appropriate Party, then such ownership or assumption shall be treated as such for all purposes under this Agreement as of the Closing Date, and for the avoidance of doubt, either Party shall be entitled to seek pursuant to the terms of Section 8.02 or 8.03.

**7.04 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 the Transaction Documents (collectively, the “**Transfer Taxes**”) 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).

**7.05 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 Acquired 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.

**7.06 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 the Transaction Documents.

#### **7.07 License for Sale of Excluded Inventory.**

- (a) Seller may, at Seller's discretion and sole expense, act as a seller of the Excluded Inventory during the term of sixty (60) days following the Closing Date, solely in accordance with the terms and conditions of this Agreement. Seller shall, in good faith and at its own expense, only sell or offer to sell the Excluded Inventory that Seller has in inventory as of the Closing Date, and shall only sell through wholesale channels.
- (b) To the extent that Seller needs to use any Intellectual Property Assets included in the Acquired Assets to comply with the terms set forth in this Section 7.07, Buyer grants Seller a royalty-free, revocable, non-exclusive right to use such Intellectual Property Assets only to the extent and for so long as required, but not exceeding sixty (60) days from the Closing Date, under the applicable contractual terms and provided any such use by Seller is consistent with the manner in which Seller is currently utilizing such Intellectual Property Assets. Buyer may terminate the license in this Section 7.07 if Seller materially breaches any obligation in this Section 7.07. For the avoidance of doubt, upon exhaustion of any need to use any Intellectual Property Assets included in the Acquired Assets to comply with the terms set forth in this Section 7.07, the license in this Section 7.07 automatically terminates and Seller shall remove or obliterate, and cease using, all Intellectual Property Assets included in the Acquired Assets. Any goodwill generated by the use of the Trademarks in the Acquired Assets by Seller pursuant to this limited license shall inure solely to the benefit of the Buyer.

#### **7.08 Guarantee.**

(a) In consideration of Selling Group Parties entering into this Agreement and the transactions contemplated hereby, the Guarantor hereby guarantees to Selling Group Parties the punctual performance, observance, and discharge by Buyer of all of the present and future contingent and non-contingent payment obligations owed or owing by the Buyer ("**Buyer Payments**"), if and when they become due and payable, pursuant to the terms of this Agreement.

(b) Upon any default by the Buyer with respect to any of the obligations herein guaranteed, the liability of the Guarantor hereunder shall be deemed to have become immediately due and payable, without demand, presentment, protest or notice of any kind, all of which are hereby waived, and without any suit or action against the Buyer or the Guarantor and without further steps to be taken or further conditions to be performed by the Selling Group Parties or anyone. Failure of the Selling Group Parties to make any demand or otherwise to proceed against the Guarantor in respect to any default by the Buyer or the Guarantor, or any delay by Selling Group Parties in doing so, shall not constitute a waiver of any Sellers right to proceed in respect to any or all other defaults by the Buyer or the Guarantor.

(c) Guarantor understands and agrees that this Section 7.08 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (a) the validity, regularity or enforceability of this Agreement or any Ancillary Document described herein or any other agreement executed by the Buyer and Selling Group Parties from time to time, (b) any defense, set-off or counterclaim (other than a defense of payment of performance) which may at any time be available to or be asserted by the Buyer against the Selling Group Parties, or (c) the dissolution or otherwise termination of the Seller; or (d) any other circumstance whatsoever (with or without notice to or knowledge of the Buyer or Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Buyer for the Buyer Payments, or of any Guarantor under this Guarantee, in bankruptcy or in any other instance.

(d) When pursuing its rights and remedies hereunder against Guarantor, the Selling Group Parties may, but shall be under no obligation to, pursue such rights and remedies as it may have against the Buyer or any other Person, and any failure by the Selling Group Parties to pursue such other rights or remedies or to collect any payments from the Buyer, shall not relieve Guarantor of any liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Selling Group Parties against Guarantor.

## **ARTICLE 8 INDEMNIFICATION**

**8.01 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained in this Agreement and the Disclosure Schedules and any other Transaction Document will survive the Closing and shall remain in full force and effect for a period of twenty-four (24) months from the Closing Date; *provided that*, the Fundamental Representations shall survive the Closing and shall remain in full force and effect for a period of four (4) years from the Closing Date. All agreements and covenants 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.

**8.02 Indemnification By Selling Group Parties.** From and after the Closing and subject to the terms and conditions of this ARTICLE 8, each Selling Group Party 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, the 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 Selling Group Party contained in this Agreement, the Ancillary Documents or in

any certificate or instrument delivered by or on behalf of any Selling Group Party pursuant to this Agreement;

- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by any Selling Group Party pursuant to this Agreement, the Ancillary Documents or any certificate or instrument delivered by or on behalf of any Selling Group Party pursuant to this Agreement;
- (c) any Excluded Asset or any Excluded Liability (including, for the avoidance of doubt and without limitation, Seller Transaction Expenses and Seller Taxes);
- (d) any Third Party Claim based upon, resulting from or arising out of the infringement of any of the Intellectual Property Assets conducted, existed or arising on or prior to the Closing Date; or
- (e) any Third Party Claim based upon, resulting from or arising out of the Business, operations, properties, assets or obligations of any Selling Group Party or any of their Affiliates (other than the Acquired Assets or Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.

**8.03 Indemnification By Buyer.** From and after the Closing and subject to the other terms and conditions of this ARTICLE 8, Buyer shall indemnify and defend each Selling Group Party (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, solely resulting from or arising out of the Business, operations, properties, assets or obligations of Buyer or any of its Affiliates conducted, existing or arising on or after the Closing Date.

**8.04 Certain Limitations.** The indemnification provided for in Section 8.02 shall be subject to the following limitations:

- (a) Basket. No Selling Group Party shall be liable to the Buyer Indemnitees for indemnification under Section 8.02(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) exceeds two percent (2%) of the



Purchase Price actually paid to Seller at such time (the “**Basket**”), in which event the Selling Group Parties shall be required to pay or be liable for all such Losses from the first dollar.

- (b) Cap. The aggregate amount of all Losses for which the Selling Group Parties shall be liable pursuant to Section 8.02(a) shall not exceed twenty percent (20%) of the Purchase Price actually paid to Seller at such time (the “**Cap**”).
- (c) Fundamental Representations. Notwithstanding the foregoing, the limitations set forth in Section 8.04(a) and Section 8.04(b) shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any Fundamental Representation; however, unless the Losses result from the Selling Group Parties’ actual fraud, in no event shall the total liability for all of the Selling Group Parties exceed the Purchase Price actually paid to the Seller.
- (d) Other Limitations.
  - (i) Notwithstanding for the limitations set forth in Section 8.04(a)-(c) or any other provision of this Agreement, except in the case of fraud, the Selling Group Party’s aggregate liability under this Agreement, including for any Selling Group Party’s liability to the Buyer Indemnitees for indemnification under Section 8.02(b)-(e), shall not exceed the Purchase Price actually paid to the Seller.
  - (ii) Indemnification payments to be made with regard to any claim for Losses shall be reduced to the extent of any amounts actually recovered by an Indemnified Party pursuant to any insurance policies covering such claim or any indemnity, contribution or other similar payment from any third party with respect thereto (net of deductibles, self-insured retention amounts, retrospective premium adjustments, and costs of collection and enforcement, in each case if and as applicable).
  - (iii) Any Losses for which any Indemnified Party is entitled to indemnification under this Agreement shall be determined without duplication of recovery by reason of the state of facts giving rise to such Losses constituting a breach of more than one representation, warranty, covenant or agreement.

**8.05 Indemnification Provisions.** The party making a claim under this ARTICLE 8 is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this ARTICLE 8 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. The Buyer shall have the right to assume the defense of any Third Party Claim at the Seller’s expense, and by the Buyer’s own counsel, and the Seller shall cooperate in good faith in such defense. In the event that the Buyer assumes the defense of any Third Party Claim, subject to Section 8.05(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 Indemnifying Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, however*, that if in the reasonable opinion of counsel to the Indemnified Party, (i) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (ii) 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 8.05(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. Indemnified Party and Indemnifying Party 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 Selling Group Party shall enter into settlement of any Third Party Claim without the prior written consent of the 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 thirty (30) 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. 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 thirty (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.

#### **8.06 Indemnification Payments; Set-off.**

- (a) **Indemnification Payments**. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE 8, the Indemnifying Party shall satisfy its obligations within fifteen (15) 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 to this ARTICLE 8 shall be satisfied: (i) from the Remaining Purchase Price; and (ii) from the Selling Group Parties, jointly and severally, to the extent the amount of Losses exceeds the aggregate amount of the Remaining Purchase Price.
- (b) **Set-Off**. Upon notice to the Selling Group Parties specifying in reasonable detail the basis thereof, Buyer may set off any amounts to which it reasonably believes itself, acting in good faith, to be entitled under the terms of this ARTICLE 8 against the Remaining Purchase Price; *provided, however*, that if the Selling Group Parties provide written notice to Buyer, within five (5) Business Days after its receipt of Buyer’s notice of set-off, that the Selling Group Parties, in good faith, object to the amount claimed by Buyer to be subject to such exercise of its set-off

rights, the amounts to which such objection notice related shall be held in a separate account by Buyer pending the final adjudication of such amounts pursuant to this ARTICLE 8.

**8.07 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.

#### **8.08 Intentionally Omitted**

**8.09 Exclusive Remedies.** Subject to Section 7.01 and Section 9.14, 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 ARTICLE 8. 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 8. Nothing in this Section 8.09 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 9 GENERAL PROVISIONS**

**9.01 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 the Transaction Documents and the transactions contemplated hereby (including the Seller Transaction Expenses) shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred.

**9.02 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.

**9.03 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 Parties at the addresses set forth on Schedule 9.03 (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 9.03).

**9.04 Seller Wire Instructions.** All amounts payable by Buyer to the Seller 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 according to the wire transfer instructions attached hereto as Exhibit H, as such instructions may be amended from time to time by written notice from Seller to Buyer.

**9.05 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not effect 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.

**9.06 Entire Agreement.** The Transaction Documents constitute the sole and entire agreement of the Parties 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 the Term Sheet. 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.

**9.07 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 the Selling Group Parties, assign all or any portion of its rights under this Agreement to one or more of its Affiliates. No assignment shall relieve the assigning party of any of its obligations hereunder.

**9.08 No Third-Party Beneficiaries.** Except as provided in ARTICLE 8, this Agreement is for the sole benefit of the Parties 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.

**9.09 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.

**9.10 Termination.**

- (a) Termination By Buyer After Failure to Cure for Failure of Performance. If (i) any Selling Group Party shall fail to perform any of its covenants contained in ARTICLE 6 (giving effect to the Migration Conditions Addendum), and shall fail to cure such default within forty-five (45) days from the Closing Date and (ii) at such time, a Fundamental Migration Completion has not occurred, then Buyer shall have the right to terminate this Agreement immediately by delivering written notice to the Selling Group Parties. The right to terminate contained herein shall not affect the right of Buyer to reasonably require the Selling Group Parties to use best efforts to perform its covenants contained in ARTICLE 6 (giving effect to the Migration Conditions Addendum).
- (b) Termination By Seller After Failure to Cure for Failure of Performance. If (i) the Buyer shall fail to perform any of its covenants contained in ARTICLE 6 (giving effect to the Migration Conditions Addendum), and shall fail to cure such default within forty-five (45) days from the Closing Date, (ii) Seller has been and continues to act in good faith to achieve a Fundamental Migration Completion and (iii) at such time, a Fundamental Migration Completion has not occurred, then Seller shall have the right to terminate this Agreement immediately by delivering written notice to the Buyer.
- (c) Effect of Termination. In the event of the termination of this Agreement in accordance with Section 9.10(a) or 9.10(b), (i) Seller or the Escrow Agent, as applicable, shall, and shall be directed to, return the Escrow Amount to the 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 8 or Section 7.01. However, the Escrow Amount shall not be returned to Buyer unless and until Seller has confirmed receipt of all of the Acquired Assets.

**9.11 Governing Law.** 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).

**9.12 Submission to Jurisdiction.** Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in any United States federal court or state court located in the state of Delaware in the City of Dover and County of Kent and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. service of process, summons, notice, or other document by certified mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

**9.13 Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT 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 OR THE TRANSACTIONS CONTEMPLATED HEREBY. 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 9.13.

**9.14 Specific Performance.** The Parties agree that irreparable damage would occur if any provision of this Agreement (including, without limitation, the covenants contained in ARTICLE 6) 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.

**9.15 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.

**9.16 Independent Legal Counsel.** Each Selling Group Party acknowledges, represents, and warrants that neither Buyer nor any legal counsel retained by Buyer have provided any legal, accounting or tax advice to such Selling Group Party, and that Buyer and any legal counsel retained by Buyer have encouraged the Selling Group Parties to consult their own respective legal counsel as to legal, tax and other matters concerning the transactions contemplated by this Agreement. Each Selling Group Party 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.

## **ARTICLE 10 DEFINED TERMS**

**10.01 Defined Terms.** As used in this Agreement, the following capitalized terms have the meanings set forth below:

**“Accounting Standards”** means GAAP.

**“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.

**“Aggregate 3PL Inventory Value”** means the 3PL Inventory Value of all SKUs of Inventory, in the aggregate.

**“Aggregate Amazon Inventory Value”** means the Amazon Inventory Value of all SKUs of Inventory, in the aggregate.

**“Amazon Business Service Agreements”** means the terms of service agreements relating to the Business Amazon Accounts.

**“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 Notices”** means all notices or communications from Amazon to a Selling Group Party threatening to effect an Amazon Seller Restriction (including, but not limited to, safety incidents, performance notifications or infringement notifications)



**“Amazon Seller Restriction”** means, with respect to a Business Amazon Account, any suspension (active or historical lasting longer than 48-hours), takedown (active or historical lasting longer than 48-hours), review-scraping, review-removal, restriction, hold or other restraint on selling or other penalty imposed, directly or indirectly, on such account which prohibits, restrains or otherwise negatively impacts the operator of such account’s ability to operate the Business on the Amazon Online Marketplace.

**“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, IP Assignment Agreement, the Closing Inventory Statement and all other agreements, instruments and documents required to be delivered at the Closing.

**“ASIN”** means an Amazon Standard Identification Number.

**“Business Accounts”** mean the Business Amazon Accounts and the Business Non-Amazon Accounts;

**“Business Amazon Accounts”** mean all third-party seller accounts with the Amazon Online Marketplace operated by Seller in conduct of the Business (including the sole right to operate each ASIN, listing or SKU related thereto), each as set forth on Schedule 1.01(a)(i), and the related Amazon Business Service Agreements.

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in New York, New York, United States of America are authorized or required by Law to be closed for business; *provided* that banks shall not be deemed to be authorized or obligated to be closed due to a “shelter in place,” “non-essential employee” or similar closure of physical branch locations at the direction of any Governmental Authority if such banks’ electronic funds transfer systems (including for wire transfers) are open for use by customers on such day.

**“Business Employee”** means any current or former director, officer, employee, manager, independent contractor, consultant, leased employee or other dedicated service provider of the Business.

**“Business Non-Amazon Accounts”** mean all third-party seller accounts with any marketplaces or sales channels other than the Amazon Online Marketplace operated by Seller in conduct of the Business (including the sole right to operate each listing, SKU or equivalent channel for sales, online or otherwise related thereto), each as set forth on Schedule 1.01(a)(i), and the related Non-Amazon Business Service Agreements

**“Closing Inventory Statement Date”** means the date and time which is one (1) day prior to the Closing Date.

**“Closing Inventory Value”** means, as of the Closing Inventory Statement Date, an amount equal to (a) the Aggregate Amazon Inventory Value; plus (b) the Aggregate 3PL Inventory Value; minus (c) the aggregate dollar value of all Payable Amounts in respect of any Amazon Inventory Units or 3PL Inventory Units (across any and all SKUs of Inventory); plus (d) the aggregate dollar value of any Paid Amounts in respect of any Closing Inventory In-Transit Units or Closing Inventory In-Production Units (in each case, across any and all SKUs of Inventory); minus (e) the Included Inventory Credit; minus (f) (i) the aggregate Landed Cost of any units of Inventory which are not Sellable or (ii) at Buyer’s discretion, any costs incurred by Buyer to make such units Sellable.

**“Closing Seller Balance”** means the aggregate amount of accounts receivable generated by conduct of the Business prior to the Closing (including, without limitation, the aggregate amount of distributable cash owed by Amazon to Seller as of the Closing Date in respect of such conduct of the Business).

**“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, including any amendment, modification, renewal, extension or ancillary document pertaining thereto.

**“Cost”** means any and all costs incurred by a Party to source, manufacture, transfer, package, ship, prepare for sale or otherwise deliver a unit of Inventory to a Fulfillment Center for distribution to end customers, including without limitation, manufacturing costs, quality control costs, freight costs, duties, import costs, insurance costs and levies and other similar costs.

**“Data Room”** means the virtual data room containing written documents and information relating to the Business on the HighQ online datasite under the name **“M&A-The Hate Stains Company\_ESR LLC”** and to which the Parties had access on or prior to the Closing Date.

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

**“Disclosure Schedules”** means those schedules executed and delivered by Seller to Buyer as of the date hereof which sets forth the exceptions to the representations and warranties contained in herein and certain other information called for by this Agreement. Unless otherwise specified, each reference in this Agreement to any numbered schedule is a reference to that numbered schedule which is included in the Disclosure Schedules.

**“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 PNC Bank, National Association, a national banking association.

**“First Stability Period”** means the period of time beginning on the 1<sup>st</sup> day of the month following the Closing Date and ending on the date that is one (1) year after such date.

**“Fulfillment Center”** means (i) any fulfillment and distribution center operated by Amazon (an **“Amazon Fulfillment Center”**) or (ii) for any third-party logistics provider used by Seller for distribution of Inventory to end customers (each, a **“3PL Fulfillment Center”**).

**“Fundamental Representations”** mean the representations and warranties set forth in Section 4.01, Section 4.08, Section 4.09(c), Section 4.09(e), Section 4.13, Section 4.14, and Section 4.15.

**“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 Credit”** means an amount equal to \$50,000.

**“Intellectual Property Agreements”** means all licenses, sublicenses, consent to use agreements, assignment agreements, 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 Seller is a party, beneficiary or otherwise bound.

**“Intellectual Property Assets”** means all Intellectual Property and Intellectual Property Registrations that are owned by 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 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 In-Production Advance”** means an amount equal to the aggregate amount of Payable Amounts due in connection with any Inventory In-Production Units for any Inventory

across all SKUs and for which payment is due from Seller to the applicable third-party within thirty (30) days of the Closing.

**“Inventory In-Transit Advance”** means an amount equal to the aggregate amount of Payable Amounts in respect of all Closing Inventory In-Transit Units for any Inventory across all SKUs.

**“Landed Cost”** means, for each SKU of Inventory, the sum of all Costs incurred by Seller.

**“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.

**“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, (b) the value of the Acquired Assets, or (c) the ability of any Selling Group Party to consummate the transactions contemplated hereby on a timely basis.

**“Net Revenue”** means gross revenue, less any product refunds, returns, and discounts, including Amazon promotional fees.

**“Non-Amazon Business Service Agreements”** means the terms of service agreements relating to the Business Non-Amazon Accounts.

**“Paid Amount”** means, in respect of each SKU of Inventory, the aggregate amount of Costs that have become due and payable and have been duly paid by Seller as of the Closing (including, without limitation, all credits, prepaid expenses and security deposits paid by Seller in respect of Inventory, as of the Inventory Closing Date).

**“Payable Amount”** means, in respect of each SKU of Inventory, the aggregate amount of Costs that are due and payable which Seller has not paid (and for which Buyer will be responsible for hereunder) to a third-party (including, without limitation, amounts pursuant to

open purchase orders or accounts payable invoices in respect of Inventory) as of the Inventory Closing Date.

**“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.

**“Remaining Purchase Price”** mean, as of the date of such determination, the aggregate amount of Purchase Price which has not yet been earned and/or delivered, as applicable, to Seller in accordance with the terms of this Agreement (including, as applicable and as of the date of such determination, any or all of the Stabilization Payments.

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

**“Restricted Business”** means any business engaged in the selling or marketing of stain and odor remover category products (including, without limitation, stain remover spray and wipes) or other products competitive with the Business, before the Closing Date.

**“Second Stability Period”** means the period of time beginning at the expiration of First Stability Period and ending on the date that is one (1) year after such date. The First Stability Period and Second Stability Period shall be referred to herein as the **“Stability Periods”** and each, a **“Stability Period”**.

**“Sellable”** means, with respect Inventory, only those units which are (a) not obsolete, damaged, slow-moving, defective and (b) otherwise able to be sold through the Business Accounts.

**“Seller Taxes”** means any Taxes (a) of or imposed on Seller or any of its Affiliates for any taxable period; (b) imposed on or with respect to the Business or the Acquired Assets for any taxable period (or portion thereof) ending on or before the Closing Date, including any Taxes arising with respect to any compensation or benefit obligations for Business Employees arising on or prior to the Closing; (c) imposed on Seller in connection with the transactions contemplated by the Transaction Documents; (d) constituting any Transfer Taxes; or (e) imposed on Buyer or any of its Affiliates as a transferee or successor of Seller, if any.

**“Seller Transaction Expenses”** means (a) all fees, costs, expenses and any other obligations incurred by any Selling Group Party or any of their Affiliates in connection with the transactions contemplated by the Transaction Documents (including all fees, cost and

expenses payable to attorneys, financial advisors, accountants, consultants or other advisers); (b) all Seller Broker Payments; (c) all payments by any Selling Group Party to obtain any third party consent required under any Acquired Contract in connection with the consummation of the transaction contemplated by the Transaction Documents; (d) all obligations that arise in whole or in part as a result of the consummation of the transaction contemplated by the Transaction Documents, under any Existing Contract or employee benefit plan in effect on or before the Closing, including all change of control, severance, retention or similar obligations to any Business Employee and all Taxes that are payable in connection with or as a result of the satisfaction of such obligations; and (e) all obligations, costs or expenses which arise in connection with the transfer, recordation or securing of the Intellectual Property Assets to Buyer pursuant to the Transaction Documents.

**“Seller’s Knowledge”** or any other similar knowledge qualification, means the actual or constructive knowledge of any Selling Group Party, or director or officer of any Seller, after due inquiry.

**“SKU”** means a stock-keeping unit maintained by a business in respect of a product or good in which it trades.

**“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.

**“Term Sheet”** means that certain Term Sheet for Asset Purchase, dated as of November 30, 2021 by and among Seller and Buyer or its Affiliate.

**“Transaction Documents”** means this Agreement, the Disclosure Schedules, the Migration Conditions Addendum, the Ancillary Documents and any other schedule, certificate or other document contemplated hereby or thereby.

**10.02 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.

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

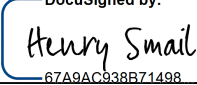
*[Remainder of page intentionally left blank]*



**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.

**SELLING GROUP PARTIES:**

**ESR LLC**

DocuSigned by:  
By:   
67A9AC938B71498

Name: Henry Smail

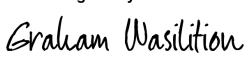
Title: Chief Executive Officer and President

DocuSigned by:  
  
67A9AC938B71498...

**Henry Smail**

DocuSigned by:  
  
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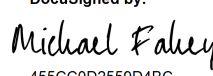
**Adam Ross**

DocuSigned by:  
  
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**Graham Wasilition**

**BUYER:**

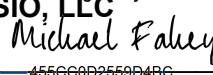
**FROSTY DREAM, INC.**

DocuSigned by:  
By:   
455CC0D2559D4BC...

Name: Michael Fahey

Title: Secretary

**GUARANTOR:**

DocuSigned by:  
By:   
455CC0D2559D4BC...

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 IP ASSIGNMENT AGREEMENT**

**EXHIBIT E**

**AGGREGATED SUMMARY OF CLOSING INVENTORY STATEMENT**

Brand: Hise Stains  
AMZ Inventory Date: 1/13/2022  
Latest Seller Inventory Snapshot: 1/14/2022

Inventory Value Summary			
Aggregate Amazon Inventory Value	\$	138,818	21.7%
Aggregate 3PL Inventory Value	\$	448,358	70.0%
Subtotal: Sum of Aggregate Amazon Inventory Value and Aggregate 3PL Inventory Value	\$	587,176	91.7%
Aggregate Payable Amounts - Amazon Inventory Units (all SKUs)	\$	-	0.0%
Aggregate Payable Amounts - 3PL Inventory Units (all SKUs)	\$	-	0.0%
Aggregate Payable Amounts - Freight Forwarder (all SKUs)	\$	-	0.0%
Subtotal: Aggregate Paid Amounts in respect of all Amazon Inventory Units and 3PL Inventory Units	\$	597,176	91.7%
Paid Amounts (Supplier Deposits) - Inventory In-Transit Units (all SKUs)	\$	32,400	5.1%
Paid Amounts (Freight Forwarder) - Inventory In-Transit Units (all SKUs)	\$	20,589	3.2%
Paid Amounts (Supplier Deposits) - Inventory In-Production Units (all SKUs)	\$	-	0.0%
Subtotal: Aggregate Paid Amounts in respect of all Inventory	\$	640,165	108.0%
Included Inventory Credit	\$	50,000	
Closing Inventory Value (excluding Payable Amounts in respect of Inventory In-Transit and In-Production)	\$	690,165	
Aggregate Payable Amounts - Inventory In-Transit Units	\$	-	0.0%
Aggregate Payable Amounts - Inventory In-Production Units	\$	-	0.0%
Closing Inventory In-Transit In-Production: Total Payable Amounts	\$	-	0.0%
Aggregate Closing Net Inventory Value plus Total Payable Amounts	\$	640,165	
Inventory In-Transit Aggregate Payable Amounts - 0 to 30 Days Post-Closing	\$	-	
Inventory In-Transit Aggregate Payable Amounts - 31 to 60 Days Post-Closing	\$	-	
Inventory In-Transit Aggregate Payable Amounts - 61+ Days Post-Closing	\$	-	
Subtotal: Aggregate Payable Amounts - Inventory In-Transit Units (all SKUs)	\$	-	
Inventory In-Production Aggregate Payable Amounts - 0 to 30 Days Post-Closing	\$	-	
Inventory In-Production Aggregate Payable Amounts - 31 to 60 Days Post-Closing	\$	-	
Inventory In-Production Aggregate Payable Amounts - 61+ Days Post-Closing	\$	-	
Subtotal: Aggregate Payable Amounts - Inventory In-Production Units (all SKUs)	\$	-	
(A) - Aggregate Amazon Inventory Value	\$	138,818	
(B) - Inventory In-Transit Advance	\$	-	
(C) - Inventory In-Production Advance	\$	-	
Closing Inventory Payment	\$	138,818	
Remaining Payable Amounts - Inventory In-Production	\$	-	

Inventory at Amazon / 3PL						
SKU	Parent ASIN	Child ASIN	Landed Cost	Closing Amazon Inventory	Closing 3PL Inventory	Closing Amazon Inventory Value
FBA-CS-120AU-2B	806Z2V3W4M	B00VKM9G2A	\$1.56	991	4,462	\$ 1,548
FBA-CS-120AU-3B	806Z2V3W4M	B0180G5A8	\$2.30	389	1,315	\$ 896
FBA-CS-SST-25P	806Z2V3W4M	B07V3S9P2	\$0.85	101	3,300	\$ 85
FBA-CS-120AU-1B	806Z2V3W4M	B07V3S9M4	\$0.85	4,888	3,458	\$ 4,168
FBA-CS-1810W	806Z2V3W4M	B07QW3QFV	\$2.78	95	1,053	\$ 264
FBA-MM-120AU-1B	B091DSK7NN	B01SG5G4D	\$0.85	43,038	50,885	\$ 36,623
FBA-RS-SST-25P	B091DSK7NN	B07QW4CT7L	\$3.50	36	63	\$ 126
FBA-MM-120AU-2B	B091DSK7NN	B07QW4CT7L	\$1.56	37,891	51,565	\$ 59,181
FBA-MM-120AU-3B	B091DSK7NN	B07QW4CT7L	\$2.30	9,061	3,240	\$ 20,865
FBA-MM-1810W	B091DSK7NN	B07QW4CT7L	\$2.78	1,799	1,159	\$ 5,003
FBA-MM-SST-25P	B091DSK7NN	B07QW4CT7L	\$3.50	164	330	\$ 351
FBA-ESR-1810W	B096DC4N4C	B07QW4CT7L	\$2.78	467	1,064	\$ 1,299
FBA-ESR-120AU-1B	B096DC4N4C	B01LX4A2C	\$0.85	4,691	5,222	\$ 4,861
FBA-ESR-120AU-2B	B096DC4N4C	B01LX4A2C	\$1.56	2,113	3,387	\$ 3,300
FBA-ESR-120AU-3B	B096DC4N4C	B07QW4CT7L	\$2.30	246	968	\$ 3,300
FBA-ESR-SST-25P	B096DC4N4C	B07QW4CT7L	\$3.50	187	309	\$ 655
SUBSTRT-SGN-FR2	Bulk Component	Bulk Component	\$0.01	0	225,452	\$ -
SST-Fin-CS-US-V4	Bulk Component	Bulk Component	\$0.03	0	85,000	\$ 2,255
SST-Fin-ESR-US-V4	Bulk Component	Bulk Component	\$0.03	0	175,000	\$ 2,550
SST-Fin-MM-US-V4	Bulk Component	Bulk Component	\$0.03	0	137,500	\$ 4,125
SST-Fin-RS-US-V4	Bulk Component	Bulk Component	\$0.03	0	112,500	\$ 3,375
CAP-20410-Blue	Bulk Component	Bulk Component	\$0.07	0	333,501	\$ -
CAP-20410-Maron	Bulk Component	Bulk Component	\$0.07	0	181,150	\$ -
CAP-20410-White	Bulk Component	Bulk Component	\$0.07	0	347,849	\$ -
ROT-4oz-Clr	Bulk Component	Bulk Component	\$0.11	0	737,001	\$ -
SLEEVE-CS-120H-V4	Bulk Component	Bulk Component	\$0.04	0	50,892	\$ -
SLEEVE-ESR-120H-V4	Bulk Component	Bulk Component	\$0.04	0	115,473	\$ -
SLEEVE-MM-120H-V4	Bulk Component	Bulk Component	\$0.04	0	57,046	\$ -
Finished Formula - (Wipes)	Bulk Component	Bulk Component	\$0.01	0	85,000	\$ -
Finished Formula - (Bottles)	Bulk Component	Bulk Component	\$0.02	0	140,800	\$ -
Formula - 725-9 - (Bottles)	Bulk Component	Bulk Component	\$0.03	0	825	\$ -
CS-120AU-US	Bulk Finished Good	Bulk Finished Good	\$0.63	0	29,456	\$ 18,585
CS-SST-1-US	Bulk Finished Good	Bulk Finished Good	\$0.14	0	21,345	\$ 2,988
ESR-120AU-US	Bulk Finished Good	Bulk Finished Good	\$0.03	0	22,897	\$ 14,447
ESR-SST-1-US	Bulk Finished Good	Bulk Finished Good	\$0.14	0	20,319	\$ 2,845
MM-120AU-US	Bulk Finished Good	Bulk Finished Good	\$0.63	0	63,165	\$ 39,653
MM-SST-1-US	Bulk Finished Good	Bulk Finished Good	\$0.14	0	4,450	\$ 623
RS-SST-1-US	Bulk Finished Good	Bulk Finished Good	\$0.14	0	0	\$ -
Ship-Bulk-19x15-Folds	Shipping Component	Shipping Component	\$0.18	0	6,300	\$ 7,434
Ship-Quad#2	Shipping Component	Shipping Component	\$1.34	0	0	\$ -
Ship-Single-Shipper	Shipping Component	Shipping Component	\$0.75	0	0	\$ -
CASE-CS-120H-24-US	Wholesale Component	Wholesale Component	\$0.31	0	0	\$ -
CASE-ESR-120H-24-US	Wholesale Component	Wholesale Component	\$0.31	0	0	\$ -
CASE-MM-120H-24-US	Wholesale Component	Wholesale Component	\$0.31	0	0	\$ -
COU-CS-12-120H-US-V3	Wholesale Component	Wholesale Component	\$1.26	0	0	\$ -
COU-ESR-12-120H-US-V3	Wholesale Component	Wholesale Component	\$0.88	0	0	\$ -
COU-MM-12-120H-US-V3	Wholesale Component	Wholesale Component	\$0.88	0	0	\$ -
BOX-CS-SST-8Box-US-V3	Wholesale Component	Wholesale Component	\$0.31	0	0	\$ -
BOX-ESR-SST-8Box-US-V3	Wholesale Component	Wholesale Component	\$0.31	0	0	\$ -
BOX-MM-SST-8Box-US-V3	Wholesale Component	Wholesale Component	\$0.31	0	0	\$ -
CASE-SST-200-US	Wholesale Component	Wholesale Component	\$0.37	0	0	\$ -
CASE-SSTP-36-US	Wholesale Component	Wholesale Component	\$0.44	0	0	\$ -
COU-CS-SST-100-US-V3	Wholesale Component	Wholesale Component	\$0.88	0	0	\$ -
COU-ESR-SST-100-US-V3	Wholesale Component	Wholesale Component	\$0.88	0	0	\$ -
COU-MM-SST-100-US-V3	Wholesale Component	Wholesale Component	\$0.88	0	0	\$ -
COU-RS-SST-100-US-V3	Wholesale Component	Wholesale Component	\$0.88	0	0	\$ -
CS-120AU-24	Wholesale Finished Goods	Wholesale Finished Goods	\$1.98	0	0	\$ -
CS-SSTP-36	Wholesale Finished Goods	Wholesale Finished Goods	\$28.75	0	0	\$ -
CS-SSTP-36	Wholesale Finished Goods	Wholesale Finished Goods	\$27.31	0	0	\$ -
ESR-120AU-24	Wholesale Finished Goods	Wholesale Finished Goods	\$19.60	0	0	\$ -
ESR-SST-CDU-200	Wholesale Finished Goods	Wholesale Finished Goods	\$29.19	0	0	\$ -
ESR-SSTP-36	Wholesale Finished Goods	Wholesale Finished Goods	\$27.31	0	0	\$ -
MM-120AU-24	Wholesale Finished Goods	Wholesale Finished Goods	\$19.60	0	0	\$ -
MM-SST-CDU-200	Wholesale Finished Goods	Wholesale Finished Goods	\$29.19	0	0	\$ -
MM-SSTP-36	Wholesale Finished Goods	Wholesale Finished Goods	\$27.31	0	0	\$ -
RS-SST-CDU-200	Wholesale Finished Goods	Wholesale Finished Goods	\$29.19	0	0	\$ -
RS-SSTP-36	Wholesale Finished Goods	Wholesale Finished Goods	\$27.31	0	0	\$ -
DEMO-BOX-LARGE	Wholesale Marketing	Wholesale Marketing	\$1.09	0	0	\$ -
DEMO-BOX-SMALL	Wholesale Marketing	Wholesale Marketing	\$0.45	0	0	\$ -
DISP-CS-HALF	Wholesale Marketing	Wholesale Marketing	\$4.90	0	0	\$ -
DISP-HSC-FULL	Wholesale Marketing	Wholesale Marketing	\$8.12	0	0	\$ -
DISP-HSC-HALF	Wholesale Marketing	Wholesale Marketing	\$5.11	0	0	\$ -
DEMO-KIT	Wholesale Marketing	Wholesale Marketing	\$0.00	0	0	\$ -

Unpaid Delivered Inventory				
Purchase Order	at AMZ	at 3PL	at Freight Forwarder	
PO 250	\$ -	\$ -	\$ -	\$ -

Inventory In Transit						
Supplier Name	Purchase Order	Deposit Paid	Outstanding Balance	# of Days Outstanding Balance Due	Invoice Total	Freight Amount Paid
ZHEJIANG SUN-R	PO 250	\$ 32,400	\$ -	1 - 30 Days	\$ 32,400	\$ 20,589

Inventory In Production					
Supplier Name	Purchase Order	Deposit Paid	Outstanding Balance	# of Days Outstanding Balance Due	Invoice Total
ZHEJIANG SUN-R	PO 250	\$ -	\$ -		\$ -

**EXHIBIT F**

**MIGRATION CONDITIONS ADDENDUM**



EXHIBIT F TO ASSET PURCHASE AGREEMENT					
MIGRATION CHECKLIST					
Any capitalized terms used defined herein shall have the meaning given to them in the Asset Purchase Agreement or in this Exhibit F.					
Ref. No.	Item Type	Item Category	Conditions Precedent to Satisfaction of Item	Item Status as of Closing Date	Estimated Time to Complete Item
1	Escrow Release Condition	Account Change of Control - <b>US/NA Amazon Seller Central Account(s)</b>	- Seller shall deliver to Buyer all primary usernames and passwords for all Amazon Seller Central Accounts associated with the Business; - Buyer shall replace with its own credentials any account credentials required to control such ASCA(s) and grant administrative level access to a secondary email address provided by Seller to Buyer; - Buyer shall replace with its own information all entity, deposit, charge method information, tax or other banking information associated with such ASCA(s); and - Buyer shall have uninterrupted primary account access and full control of all such ASCA(s) for a period of twenty-four (24) hours.	Incomplete (to be completed post-Closing).	Within 48-72 hours business of Closing Date.
2(a)	Escrow Release Condition	Account Change of Control - <b>Shopify</b>	- Seller shall deliver to Buyer all primary usernames and passwords for <b>Shopify</b> account(s) associated with the Business; - Buyer shall add, as co-manager with Seller for the purpose of Seller's execution of Item 12 of this Exhibit F, its own information all deposit, charge method information; - Buyer shall replace with its own credentials any account credentials required to control such <b>Shopify</b> account(s); and - Buyer shall have uninterrupted co-management account access and full control of <b>Shopify</b> account(s) for a period of twenty-four (24) hours.	Incomplete (to be completed post-Closing).	Within 48-72 hours of Closing Date.
2(b)	General Migration Condition (not a condition precedent for Escrow Release)	Listing shut down - <b>Walmart</b>	- Seller will shut off listings, included as Purchased Assets, in Seller's Walmart account prior to the Closing Date; and - Seller shall provide proof to Buyer that these listings have been deactivated (inventory set to zero).	Incomplete (to be completed prior to Closing).	Prior to Closing or within 24 hours of Closing, at the discretion of Seller.
2(c)	General Migration Condition (not a condition precedent for Escrow Release)	Account Shutdown - <b>Wholesale</b>	- Seller shall terminate all of Seller's wholesale accounts prior to closing by cancelling or terminating all of Seller's wholesale contracts; - Seller shall work with Thrasio's internal teams to transfer relevant relationships when asked.	Incomplete (to be completed pre-closing)	Within fourteen (14) days of the Closing Date.
3	Escrow Release Condition	Material Supplier Commitments	- Seller shall have delivered to each Material Supplier an introduction to Buyer (or its designated Representative) via email or through other forms of communication mutually agreed upon between Buyer and Seller; and - Each Material Supplier shall have confirmed receipt of such communication and indicated in response thereto the accuracy of the pricing terms, lead times and other terms contained thereon and its intent to continue to supply the Business as conducted by Buyer.	Incomplete (to be completed post-Closing).	Prior to Closing or within 24 hours of Closing, at the discretion of Seller.
4	Escrow Release Condition	Customer Service Commitments	- Seller shall have delivered to its customer service assets used by Seller in connection with the Business prior to the Closing an introduction to Buyer (or its designated Representative) via email or through other forms of communication mutually agreed upon between Buyer and Seller; and - Each such customer service asset shall have confirmed receipt of such communication and indicated in response thereto its intent to continue to serve the Business for a minimum of ninety (90) days in accordance with Item 15 of this Exhibit F (Transition Services - Customer Service).	Incomplete (to be completed post-Closing).	Prior to Closing or within 48-72 hours of Closing, at the discretion of Seller.
5	General Migration Condition (not a condition precedent for Escrow Release)	Influencer - Daryl-Ann Denner	- Seller shall deliver Buyer an introduction to Daryl-Ann Denner (or its designated Representative) via email or through other forms of communication mutually agreed upon between Buyer and Seller; and - Seller shall use best efforts to assist Buyer with establishing a new contract with Daryl-Ann Denner.	Incomplete (to be completed post-Closing).	Within fourteen (14) days of the Closing Date.
6	General Migration Condition (not a condition precedent for Escrow Release)	Acquired Asset Transfer - Software	- Seller shall use best efforts to support the transfer to Buyer of all Software included in the Intellectual Property Assets and any third-party software used to monitor, optimize or otherwise manage the Business; - Seller shall deliver to Buyer the main username and password for any such software; and - At such time, Buyer shall replace with its own credentials any account credentials required to control such software.	Incomplete (to be completed post-Closing).	Within fourteen (14) days of the Closing Date.
7	General Migration Condition (not a condition precedent for Escrow Release)	Acquired Asset Transfer - Intellectual Property Assets	- Seller shall use best efforts to support the transfer to Buyer of all Intellectual Property Assets; - Seller take all commercially reasonable action at the request of Buyer to support the preparation and submission of assignments of Intellectual Property Registrations with the USPTO and other international intellectual property registrars; - Buyer shall file all documentation required to properly evidence the transfer of all Intellectual Property Assets with the USPTO and other international intellectual property registrars.	Incomplete (to be completed post-Closing).	Within ninety (90) days of the Closing Date.
8	General Migration Condition (not a condition precedent for Escrow Release)	Acquired Asset Transfer - Creative Assets	- Seller shall deliver to Buyer in working files (e.g., pdf, illustrator) all creative assets used by it in its conduct of the Business (including, but not limited to, artwork, packaging, advertising, mixed media).	Incomplete (to be completed post-Closing).	Within fourteen (14) days of Closing Date
9	General Migration Condition (not a condition precedent for Escrow Release)	Post-Closing Inventory Value Verification	- Buyer shall conduct Post-Closing Inventory Value Verification in accordance with Section 3.02 of the Agreement (including, but not limited to, by confirming the total inventory amount located at Amazon via Seller Central reports and electronic or physical verification of inventory located at third-party warehouses); and - Buyer shall deliver the Post-Closing Inventory Statement to Seller and pay to Seller the Post-Closing Inventory Payment, subject to and in accordance with Sections 3.02 through 3.04 of the Agreement.	Incomplete (to be completed post-Closing).	Within forty-five (45) days of the Closing Date in accordance with Sections 3.02 through 3.04 of the Agreement
10	General Migration Condition (not a condition precedent for Escrow Release)	Material Supplier Onboarding	- Seller will use best efforts to facilitate the onboarding (i.e. the achievement of the ability to directly pay in respect of purchase orders to) of each Material Supplier to Buyer's internal financial systems; and - Buyer shall onboard each Material Supplier to Buyer's internal financial systems.	Incomplete (to be completed post-Closing).	Varies based on Material Supplier cooperation; within ninety (90) days of the Closing Date.
11	General Migration Condition (not a condition precedent for Escrow Release)	Customer Service Takeover	- Buyer shall, within 45 days of the Closing, at its discretion, either (i) enter into its own consulting agreement, employment agreement or other arrangement for services with the customer service assets used by Seller in connection with the Business prior to the Closing or (ii) otherwise transition the customer service of the Business to its internal customer service teams; and - Seller shall use best efforts to facilitate any communication between Buyer and the customer service assets used by Seller in connection with the Business prior to the Closing in furtherance of the same.	Incomplete (to be completed post-Closing).	Within forty five (45) days of the Closing Date.
12	General Migration Condition (not a condition precedent for Escrow Release)	Closing Seller Balance	Buyer shall settle, establish and pay to Seller the Closing Seller Balance subject to the terms and conditions of Section 6.03 of the Agreement.	Incomplete (to be completed post-Closing).	Within thirty (30) days of the Closing Date.
13	Transition Service	<b>Shopify</b>	Seller and Principal shall continue to operate and maintain <b>Shopify</b> accounts (through co-management described in Item 19) until all assets related to the <b>Shopify</b> accounts have been effectively transferred to Buyer, including but not limited to, the full removal or transfer of any <b>Shopify</b> inventory to a location controlled by Buyer.	Ongoing Transition Service obligation.	Until a Completed Migration.
14	Transition Service	Material Suppliers	Until such time where Item 10 on this Exhibit F (Material Supplier Onboarding) is complete and for the purpose of avoiding disruption in supply chain operations of the Business, Seller and Principal shall, at the request of Buyer and on Buyer's behalf, advance payment to certain supplier invoices or purchase orders, at the expense of Buyer, to be reconciled in accordance with Item 16 on this Exhibit F (Transition Services - Payments).	Ongoing Transition Service obligation.	Until the completion of Item 10 on this Exhibit F (Material Supplier Onboarding).
15	Transition Service	Customer Service	Until such time where Item 11 on this Exhibit F (Customer Service Takeover) is complete and for the purpose of avoiding disruption in customer service operations of the Business, Seller and Principal shall cause the Customer Service Assets to remain in service of the Business in a manner substantially similar as the Business as conducted by Seller prior to the Closing Date, (i) at the expense of Seller for the first forty-five (45) days following the Closing Date and (ii) at the expense of Buyer beginning forty-five (45) days from the Closing Date, to be reconciled in accordance with Item 16 on this Exhibit F (Transition Services - Payments). - Beginning with the completion of Item 12 of this Exhibit F (Closing Seller Balance), Buyer and Seller shall maintain accounts for all payments to be made by Seller on behalf of Buyer made pursuant to this Exhibit F (including, without limitation in Item 14 (Transition Services - Material Suppliers) and Item 15 (Transition Services - Customer Service); - At the close of each month during until a Completed Migration has been achieved in accordance with the Agreement, Buyer and Seller shall net settle such accounts to zero by payment of wire transfer of immediately available funds to the Party owed.	Ongoing Transition Service obligation.	Until the completion of Item 11 on this Exhibit F (Customer Service Takeover).
16	Transition Service	Payments	- At the close of each month during until a Completed Migration has been achieved in accordance with the Agreement, Buyer and Seller shall net settle such accounts to zero by payment of wire transfer of immediately available funds to the Party owed.	Ongoing Transition Service obligation.	Until a Completed Migration.
17	Transition Service	Business Continuity Support	- Seller and Principals shall, upon reasonable prior request of Buyer, actively provide services, support, and training to Buyer and its Affiliates and their respective personnel, to transition the Acquired Assets to Buyer and consult with Buyer in connection with the operation of the Business. - Without limiting the generality of the services required under this Item 17 (Business Continuity Support), such services include, but are not limited to: (a) communicating with vendors and customers regarding the transition of the Business; (b) responding to questions from Buyer or Buyer's Affiliates regarding Seller's past practices in operation of the Business; (c) forwarding correspondence, telephone calls and payments to Buyer received by Seller and Principals in connection with the Business; (d) assisting Buyer with vendors; (e) assisting Buyer with any issues related to the Business; and (f) such other services as may be requested by Buyer or its Affiliates from time to time.	Ongoing Transition Service obligation.	Until ninety (90) days following the Closing Date.
18	Transition Service	Employees - Ashley Chang	Seller to contract Ashley Chang for purposes of maintaining marketing duties for a minimum of 45 days after close with the option to extend. Seller continues to pay for additional services directly. Buyer will reimburse Seller for service rates in the monthly due to / from payments.	Ongoing Transition Service obligation.	Until forty five (45) days following the Closing Date with an option to extend.

**EXHIBIT G**  
**SELLER WIRE INSTRUCTIONS**

[Seller to provide.]