

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM 10-Q**

(Mark One)

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

For the quarterly period ended **June 30, 2018**

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number **0-51813**

**LIQUIDITY SERVICES, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of  
Incorporation or Organization)

**52-2209244**

(I.R.S. Employer  
Identification No.)

**6931 Arlington Road, Suite 200, Bethesda, MD**

(Address of Principal Executive Offices)

**20814**

(Zip Code)

**(202) 467-6868**

(Registrant's Telephone Number, Including Area Code)

(Former Name, Former Address and Former Fiscal Year, If Changed Since Last Report)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

The number of shares outstanding of the issuer's common stock, par value \$.001 per share, as of August 1, 2018 was 32,123,193.

## INDEX

	<u>Page</u>
<b><u>Part I. FINANCIAL INFORMATION (UNAUDITED)</u></b>	
<u>Item 1.</u>	
<u>Consolidated Financial Statements</u>	<u>3</u>
<u>Consolidated Balance Sheets</u>	<u>3</u>
<u>Consolidated Statements of Operations</u>	<u>4</u>
<u>Consolidated Statements of Comprehensive Loss</u>	<u>5</u>
<u>Consolidated Statements of Cash Flows</u>	<u>6</u>
<u>Notes to the Unaudited Consolidated Financial Statements</u>	<u>7</u>
<u>Item 2.</u>	
<u>Management’s Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>21</u>
<u>Item 3.</u>	
<u>Quantitative and Qualitative Disclosures About Market Risk</u>	<u>36</u>
<u>Item 4.</u>	
<u>Controls and Procedures</u>	<u>36</u>
<b><u>Part II. OTHER INFORMATION</u></b>	
<u>Item 1.</u>	
<u>Legal Proceedings</u>	<u>38</u>
<u>Item 1A.</u>	
<u>Risk Factors</u>	<u>38</u>
<u>Item 6.</u>	
<u>Exhibits</u>	<u>39</u>
<b><u>SIGNATURES</u></b>	<b><u>40</u></b>

## PART I—FINANCIAL INFORMATION

## Item 1. Consolidated Financial Statements.

**Liquidity Services, Inc. and Subsidiaries**  
**Consolidated Balance Sheets**  
(Dollars in Thousands)

	June 30, 2018 (Unaudited)	September 30, 2017
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 83,411	\$ 94,348
Short-term investments	10,000	—
Accounts receivable, net of allowance for doubtful accounts of \$531 and \$668 at June 30, 2018 and September 30, 2017, respectively	5,856	11,598
Inventory	12,797	20,736
Prepaid taxes	2,267	2,466
Prepaid expenses and other current assets	6,857	9,774
Total current assets	121,188	138,922
Property and equipment, net	15,952	16,793
Intangible assets, net	397	427
Goodwill	45,316	45,388
Net deferred long-term tax assets	963	962
Other assets	13,624	12,737
Total assets	\$ 197,440	\$ 215,229
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 16,264	\$ 13,099
Accrued expenses and other current liabilities	18,204	30,193
Distributions payable	2,239	3,081
Payables to sellers	28,925	24,383
Total current liabilities	65,632	70,756
Deferred taxes and other long-term liabilities	6,487	11,837
Total liabilities	72,119	82,593
Commitments and contingencies (Note 12)		
Stockholders' equity:		
Common stock, \$0.001 par value; 120,000,000 shares authorized; 32,109,731 shares issued and outstanding at June 30, 2018; 31,503,349 shares issued and outstanding at September 30, 2017	29	29
Additional paid-in capital	231,327	227,264
Accumulated other comprehensive loss	(7,195)	(6,431)
Retained earnings (accumulated deficit)	(98,840)	(88,226)
Total stockholders' equity	125,321	132,636
Total liabilities and stockholders' equity	\$ 197,440	\$ 215,229

*See accompanying notes to the unaudited consolidated financial statements.*

**Liquidity Services, Inc. and Subsidiaries**  
**Unaudited Consolidated Statements of Operations**  
**(Dollars in Thousands, Except Per Share Data)**

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2018	2017	2018	2017
Revenue	\$ 32,080	\$ 44,404	\$ 115,464	\$ 144,799
Fee revenue	18,489	21,116	56,345	63,851
Total revenue	50,569	65,520	171,809	208,650
Costs and expenses from operations:				
Cost of goods sold	19,489	30,413	75,847	97,248
Seller distributions	3,936	5,189	11,107	14,697
Technology and operations	13,663	19,639	47,718	62,607
Sales and marketing	8,386	8,273	24,921	27,410
General and administrative	6,763	8,751	21,791	26,836
Depreciation and amortization	1,020	1,365	3,375	4,228
Other operating expenses	452	652	2,222	1,044
Total costs and expenses	53,709	74,282	186,981	234,070
Loss from operations	(3,140)	(8,762)	(15,172)	(25,420)
Interest and other income, net	(47)	(189)	(776)	(291)
Loss before provision (benefit) for income taxes	(3,093)	(8,573)	(14,396)	(25,129)
Provision (benefit) for income taxes	612	41	(3,824)	91
Net loss	\$ (3,705)	\$ (8,614)	\$ (10,572)	\$ (25,220)
Basic and diluted loss per common share	\$ (0.12)	\$ (0.27)	\$ (0.33)	\$ (0.80)
Basic and diluted weighted average shares outstanding	32,104,368	31,485,599	31,984,222	31,369,077

*See accompanying notes to the unaudited consolidated financial statements.*

**Liquidity Services, Inc. and Subsidiaries**  
**Unaudited Consolidated Statements of Comprehensive Loss**  
**(Dollars in Thousands)**

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2018	2017	2018	2017
Net loss	\$ (3,705)	\$ (8,614)	\$ (10,572)	\$ (25,220)
Other comprehensive (loss) income:				
Foreign currency translation	(748)	323	(764)	(68)
Other comprehensive (loss) income, net of taxes	(748)	323	(764)	(68)
Comprehensive loss	\$ (4,453)	\$ (8,291)	\$ (11,336)	\$ (25,288)

*See accompanying notes to the unaudited consolidated financial statements.*

**Liquidity Services, Inc. and Subsidiaries**  
**Unaudited Consolidated Statements of Cash Flows**  
(In Thousands)

	Nine Months Ended June 30,	
	2018	2017
<b>Operating activities</b>		
Net loss	\$ (10,572)	\$ (25,220)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	3,375	4,228
Stock compensation expense	4,134	5,462
Provision for inventory allowance	2,092	8,101
Provision for doubtful accounts	191	(1)
Deferred tax benefit	(4,814)	—
Impairment of intangible assets	—	1,028
Change in fair value of financial instruments	90	(749)
Gain from sale of property and equipment	(489)	—
Changes in operating assets and liabilities:		
Accounts receivable	5,551	(1,274)
Inventory	5,847	633
Prepaid and deferred taxes	197	1,356
Prepaid expenses and other assets	1,938	981
Accounts payable	3,165	2,036
Accrued expenses and other current liabilities	(12,149)	(13,422)
Distributions payable	(842)	8,208
Payables to sellers	4,542	(4,971)
Other liabilities	(664)	(662)
Net cash provided by (used in) operating activities	1,592	(14,266)
<b>Investing activities</b>		
Increase in intangibles	(23)	(78)
Purchases of property and equipment, including capitalized software	(2,697)	(6,210)
Proceeds from sales of property and equipment	828	—
Purchase of short-term investments	(10,000)	—
Net cash used in investing activities	(11,892)	(6,288)
<b>Financing activities</b>		
Proceeds from exercise of common stock options (net of tax)	12	93
Net cash provided by financing activities	12	93
Effect of exchange rate differences on cash and cash equivalents	(649)	(117)
Net decrease in cash and cash equivalents	(10,937)	(20,578)
Cash and cash equivalents at beginning of period	94,348	134,513
Cash and cash equivalents at end of period	\$ 83,411	\$ 113,935
<b>Supplemental disclosure of cash flow information</b>		
Cash paid (received) for income taxes, net	\$ 800	\$ (931)

*See accompanying notes to the unaudited consolidated financial statements.*

**Liquidity Services, Inc. and Subsidiaries**  
**Notes to the Unaudited Consolidated Financial Statements**

## **1. Organization**

Liquidity Services (the “Company”) operates a network of leading ecommerce marketplaces that enable buyers and sellers to transact in an efficient, automated environment offering over 500 product categories. The Company’s marketplaces provide professional buyers access to a global, organized supply of new, surplus, and scrap assets presented with digital images and other relevant product information. Additionally, the Company enables its corporate and government sellers to enhance their financial return on offered assets by providing a liquid marketplace and value-added services that encompass the consultative management, valuation, and sale of surplus assets. The Company’s services include program management, valuation, asset management, reconciliation, Return to Vendor (“RTV”) and Returns Management Authorization (“RMA”), refurbishment and recycling, fulfillment, marketing and sales, warehousing and transportation, buyer support, and compliance and risk mitigation, as well as self-service tools for its sellers. The Company organizes the products on its marketplaces into categories across major industry verticals such as consumer electronics, general merchandise, apparel, scientific equipment, aerospace parts and equipment, technology hardware, energy equipment, industrial capital assets, fleet and transportation equipment and specialty equipment. The Company’s marketplaces are [www.liquidation.com](http://www.liquidation.com), [www.govliquidation.com](http://www.govliquidation.com), [www.govdeals.com](http://www.govdeals.com), [www.networkintl.com](http://www.networkintl.com), [www.secondipity.com](http://www.secondipity.com), [www.go-dove.com](http://www.go-dove.com), [www.irondirect.com](http://www.irondirect.com), and [www.auctiondeals.com](http://www.auctiondeals.com). The Company has over 10,000 sellers, including Fortune 1000 and Global 500 organizations as well as federal, state, and local government agencies. The Company has three reportable segments, Retail Supply Chain Group (RSCG), Capital Assets Group (CAG), and GovDeals. See Note 13 in the Notes to the Consolidated Financial Statements for Segment Information.

The Company’s operations are subject to certain risks and uncertainties, many of which are associated with technology-oriented companies, including, but not limited to, the Company’s dependence on use of the Internet, the effect of general business and economic trends, the Company’s susceptibility to rapid technological change, actual and potential competition by entities with greater financial and other resources than the Company, and the potential for the U.S. Government agencies or the commercial sellers from which the Company derives a significant portion of its inventory to change the way they conduct their disposition of surplus or scrap assets or to otherwise terminate or elect not to renew their contracts with the Company.

The Company has evaluated subsequent events through the date that these financial statements were issued and filed with the Securities and Exchange Commission.

## **2. Summary of Significant Accounting Policies**

### **Unaudited Interim Financial Information**

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles (GAAP) for interim financial information. Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. In the opinion of management, all adjustments, consisting of normal, recurring adjustments considered necessary for a fair presentation have been included. The information disclosed in the notes to the consolidated financial statements for these periods is unaudited. Operating results for the three and nine months ended June 30, 2018 are not necessarily indicative of the results that may be expected for the year ending September 30, 2018 or for any future period.

In the Consolidated Statements of Operations, revenue from the resale of inventory that the Company purchases from sellers is recognized within “Revenue”. Commission fees from the sale of inventory that the Company sells on a consignment basis and other non-consignment fee revenue, which is largely made up of service revenue, is recognized within “Fee Revenue”.

### **New Accounting Pronouncements**

#### *Accounting Standards Adopted*

In March 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2016-09, *Compensation - Stock Compensation (Topic 718)*. This update was issued as part of the FASB’s simplification initiative and affects all entities that issue share-based awards to their employees. The amendments in this update cover such

areas as the recognition of excess tax benefits and deficiencies and an accounting policy election for forfeitures. As part of the new guidance:

- Excess tax benefits and deficiencies arising from share-based awards are reflected in the condensed consolidated statements of operations as income tax expense rather than within stockholders' equity.
- Excess tax benefits will be presented as an operating activity on the statement of cash flows rather than as a financing activity.
- A forfeiture election will be made to either estimate forfeitures (similar to the requirement in effect prior to adoption of the update) or recognize actual forfeitures as they occur. Entities will apply the forfeiture election provision using a modified retrospective transition approach, with a cumulative effect adjustment recorded to retained earnings as of the beginning of the period of adoption.
- Methods used to satisfy statutory tax withholding requirements by employers who withhold shares upon settlement of an award on behalf of an employee to cover tax obligations are broadened to allow for a range of withholding from the minimum to the maximum statutory allowable amounts.

The Company adopted the provisions of this guidance during the first quarter of fiscal 2018 as follows:

- Excess tax benefits and deficiencies arising from share-based awards are reflected within the Consolidated Statements of Operations as income tax expense; adopted prospectively, with no impact to prior year amounts;
- Excess tax benefits are presented as an operating activity on the statement of cash flows; adopted prospectively with no impact on prior year amounts.

As part of its adoption of ASU 2016-09, the Company made an accounting policy election to change the way in which it accounts for forfeitures of share-based awards. Specifically, beginning in the first quarter of fiscal 2018, the Company recognizes forfeitures of share-based awards as they occur in the period of forfeiture rather than estimating the number of awards expected to be forfeited at the grant date and subsequently adjusting the estimate when awards are actually forfeited. The change in accounting policy resulted in an adjustment to retained earnings as of October 1, 2017 of approximately \$0.2 million.

#### *Accounting Standards Not Yet Adopted*

In January 2017, the FASB issued ASU 2017-01, *Business Combinations* (Topic 805). ASU 2017-01 clarifies the definition of a business to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. The definition of a business affects many areas of accounting including acquisitions, disposals, goodwill, and consolidation. This guidance will become effective for the Company beginning on October 1, 2018. The amendments in this update should be applied prospectively on or after the effective date. No disclosures are required at transition. The Company does not expect the adoption of this standard to have a material effect upon the consolidated financial statements.



In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers*, which supersedes most existing revenue recognition guidance under GAAP. The new standard will change the way the Company recognizes revenue and significantly expand the disclosure requirements for revenue arrangements. The guidance may be adopted either retrospectively or on a modified retrospective basis whereby the new standard would be applied to new and existing arrangements with remaining performance obligations as of the effective date, with a cumulative catch-up adjustment recorded to retained earnings at the effective date for existing arrangements with remaining performance obligations. During the fiscal year ended September 30, 2017, the Company initiated a formal project to assess the new standard, which is being completed in three phases: an assessment phase, a design phase, and an implementation phase. The Company has completed the assessment phase, which consisted of reviewing a representative sample of contracts, engaging in discussions with key stakeholders, and cataloging potential impacts on the Company's accounting policies, financial statements, and systems and processes. The implementation team has apprised both management and the audit committee of project status on a regular basis. As part of the design phase, the Company is performing an in-depth contract review process, and drafting a set of accounting policies in compliance with the new standard. The Company is continuing to evaluate all potential impacts of the new standard, including certain potential accounting impacts that the Company has identified that, require more detailed analysis, including the principal-agent guidance, the transfer of control guidance, and the guidance on when certain services that the Company provides would be considered separate performance obligations. Because this assessment is preliminary and the accounting for revenue recognition is subject to significant judgment, this could change as the Company finalizes its assessment of the new standard. The Company does not yet know and cannot reasonably estimate the quantitative impact of adoption of the new standard on the consolidated financial statements. This guidance will become effective for the Company beginning on October 1, 2018. The Company intends to adopt the new standard on a modified retrospective basis.

In February 2016, the FASB issued ASU 2016-2, *Leases*. ASU 2016-02 will change the way the Company recognizes its leased assets. ASU 2016-2 will require organizations that lease assets—referred to as "lessees"—to recognize on the balance sheet the assets and liabilities representing the rights and obligations created by those leases. ASU 2016-2 will also require disclosures to help investors and other financial statement users better understand the amount, timing, and uncertainty of cash flows arising from leases. The guidance will be effective for the Company beginning on October 1, 2019. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. The Company is currently evaluating the new standard and the effect that adoption of the standard is expected to have on the Company's consolidated financial statements and related disclosures.

In January 2017, the FASB issued ASU 2017-04, *Intangibles-Goodwill and Other (Topic 350)*. Under ASU 2017-04 the entity is required to perform its annual or interim goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount. An entity is required to recognize an impairment charge for the amount by which the carrying amount of a reporting unit exceeds the reporting unit's fair value; however, the loss recognized should not exceed the total amount of goodwill allocated to that reporting unit. Additionally, an entity is required to consider income tax effects from any tax-deductible goodwill on the carrying amount of the reporting unit when measuring the goodwill impairment loss, if applicable. This guidance will become effective for the Company beginning on October 1, 2020. The Company is currently evaluating the methods of adoption allowed by the new standard.

In March 2017, the FASB issued ASU 2017-07, *Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost*. ASU 2017-07 changes how employers that sponsor defined benefit pension and/or other postretirement benefit plans present the cost of the benefits in the income statement. Under this standard, employers will present the service cost component of net periodic benefit cost in the same income statement line item(s) as other employee compensation costs arising from services rendered during the period. Employers will present the other components of the net periodic benefit cost separately from the line item(s) that includes the service cost and outside of any subtotal of operating income, if one is presented. This guidance will become effective for the Company beginning on October 1, 2018. The Company is currently evaluating the methods of adoption allowed by the new standard. The Company does not expect the adoption of this standard to have a material effect upon the consolidated financial statements.

In February 2018, the FASB issued ASU 2018-02, *Income Statement - Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*. ASU 2018-02 allows entities to elect to classify from accumulated other comprehensive income (loss) to retained earnings stranded tax effects resulting from the Tax Cuts and Jobs Act enacted on December 22, 2017. An entity that does not elect to reclassify the income tax effects of the Tax Cuts and Jobs Act shall disclose in the period of adoption a statement that the election was not made. This guidance will become effective for the Company beginning on October 1, 2019. The Company is currently evaluating the methods of adoption of the new standard and the effect that adoption of the standard is expected to have on the Company's consolidated financial statements and related disclosures.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*. This update is intended to reduce diversity in practice in how certain transactions are classified in the statement of cash flows. The update provides new guidance regarding the classification of debt prepayment or debt extinguishment costs, settlement of zero-coupon debt instruments, contingent consideration payments made after a business combination, proceeds from the settlement of insurance claims, proceeds from the settlement of corporate-owned life insurance policies, including bank-owned life insurance policies, distributions received from equity method investments, beneficial interests in securitized transactions, and separately identifiable cash flows and application of the predominance principle. This standard will be effective for financial statements issued by public companies for the annual and interim periods beginning after December 15, 2017. Early adoption of the standard is permitted. The Company is currently evaluating the effect that adoption of the standard is expected to have on the Company's consolidated financial statements and related disclosures.

#### **Promissory Note**

On September 30, 2015, the Company sold certain assets related to its Jacobs Trading business to Tanager Acquisitions, LLC (the "Buyer"). In connection with the disposition, the Buyer assumed certain liabilities related to the Jacobs Trading business. The Buyer issued a \$12.3 million five-year interest bearing promissory note to the Company. Of the \$12.3 million, \$2.5 million has been repaid. Of the remaining \$9.8 million, \$8.3 million is recorded in Other assets, and \$1.5 million in Prepaid expenses and other current assets as of June 30, 2018.

#### **Risk Associated with Certain Concentrations**

The Company does not perform credit evaluations for the majority of its buyers. However, substantially all sales are recorded subsequent to payment authorization being received. As a result, the Company is not subject to significant collection risk, as most goods are not shipped before payment is received.

For consignment sales transactions, funds are typically collected from buyers and are held by the Company on the sellers' behalf. The funds are included in cash in the consolidated financial statements. The Company releases the funds to the seller, less the Company's commission and other fees due, after the buyer has accepted the goods or within 30 days, depending on the state where the buyer and seller conduct business. The amount of cash held on behalf of the sellers is recorded within Accounts payable and Payables to sellers in the accompanying Consolidated Balance Sheets.

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash in banks over FDIC limits, certificates of deposit, and accounts receivable. The Company deposits its cash with financial institutions that the Company considers to be of high credit quality.

During the nine months ended June 30, 2018, the Company had two material vendor contracts with the Department of Defense (DoD) under which it acquired, managed and sold government property, the Surplus Contract and the Scrap Contract. Revenue from the sale of property acquired, as well as provision of services, under the Surplus Contract accounted for approximately 0.2% and 26.4% of the Company's consolidated revenue for the three months ended June 30, 2018 and 2017, respectively, and for approximately 16.2% and 27.8% of the Company's consolidated revenue for the nine months ended June 30, 2018 and 2017, respectively. Revenue from the sale of property acquired under the Scrap Contract accounted for approximately 12.1% and 12.3% of the Company's consolidated revenue for the three months ended June 30, 2018 and 2017, respectively, and 10.0% and 10.9% of the Company's consolidated revenue for the nine months ended June 30, 2018 and 2017, respectively. These contracts are included within the Company's CAG segment. See Note 3, Significant Contracts, for further information related to the wind-down of the Surplus Contract.

Additionally, the Company has a vendor contract with Amazon.com, Inc. under which the Company acquires and sells commercial merchandise. The property purchased under this contract represented approximately 41.0% and 25.0% of cost of goods sold for the three months ended June 30, 2018 and 2017, respectively, and 28.5% and 22.1% of cost of goods sold for the nine months ended June 30, 2018 and 2017, respectively. This contract is included within the Company's RSCG segment.

#### **Earnings per Share**

The Company calculates net income (loss) per share in accordance with FASB Topic 260 Earnings Per Share ("ASC 260"). Under ASC 260, basic net income (loss) per common share is calculated by dividing net income (loss) by the weighted-average number of common shares outstanding during the reporting period. The weighted average number of shares of common

**Liquidity Services, Inc. and Subsidiaries**  
**Notes to the Unaudited Consolidated Financial Statements — (Continued)**

stock outstanding includes vested restricted stock units. Diluted net income (loss) per share reflects the potential dilution that could occur assuming conversion or exercise of all dilutive unexercised stock options and unvested restricted stock units. The dilutive effect of unexercised stock options and unvested restricted stock units was determined using the treasury stock method. Under the treasury stock method, the proceeds received from the exercise of stock options, and the amount of compensation cost for future service not yet recognized by the Company are assumed to be used to repurchase shares of the Company's common stock. Stock options and restricted stock units are not included in the computation of diluted net income (loss) per share when they are antidilutive.

For the three and nine months ended June 30, 2018 and 2017, the basic and diluted weighted average common shares were the same because the inclusion of dilutive securities in the computation of diluted net income would have been anti-dilutive. See Note 7 for outstanding stock options and unvested restricted stock, all of which are anti-dilutive for the three and nine months ended June 30, 2018 and 2017.

The following summarizes the basic and diluted loss per share:

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2018	2017	2018	2017
	(Unaudited)			
	(dollars in thousands, except per share amounts)			
Weighted average shares calculation:				
Basic weighted average common shares outstanding	32,104,368	31,485,599	31,984,222	31,369,077
Treasury stock effect of options and restricted stock	—	—	—	—
Diluted weighted average common shares outstanding	32,104,368	31,485,599	31,984,222	31,369,077
Net loss	\$ (3,705)	\$ (8,614)	\$ (10,572)	\$ (25,220)
Basic and diluted loss per common share	\$ (0.12)	\$ (0.27)	\$ (0.33)	\$ (0.80)

### Stock-Based Compensation

The Company estimates the fair value of share-based awards on the date of grant. The Company issues stock options and stock appreciation rights with restrictions that lapse upon either the passage of time (service vesting conditions), the achievement of performance targets (performance vesting conditions), or some combination thereof. In addition, the Company issues stock options that vest upon the achievement of certain Company stock price targets (market vesting conditions). The fair value of stock options and stock appreciation rights with service and/or performance vesting conditions is determined using the Black-Scholes option-pricing model. For those stock options with only service vesting conditions, the Company recognizes compensation cost on a straight-line basis over the explicit service period. For stock options with both performance and service vesting conditions, the Company starts recognizing compensation cost over the remaining service period, when it is probable the performance condition will be met.

The Company issues restricted stock units with service vesting conditions, performance vesting conditions, and market vesting conditions, or some combination thereof. For those restricted stock units with only service vesting conditions, the Company recognizes compensation cost on a straight-line basis over the explicit service period. For restricted stock units with both performance and service vesting conditions, the Company starts recognizing compensation cost over the remaining service period when it is probable the performance condition will be met. The fair value of restricted stock units with service vesting and/or performance vesting is based on the closing price of the Company's common stock on the date of grant.

For the Company's stock options and restricted stock units with market vesting conditions, the ultimate number of shares to be earned depends on the Company's total shareholder return during the performance period. The fair value of these stock options and restricted stock units is estimated on the grant date using a Monte Carlo simulation model. The Company recognizes compensation cost for stock options and restricted stock units with market vesting conditions over the derived service period.

The determination of the fair value of the Company's stock options and stock appreciation rights with service and performance vesting conditions is based on a variety of factors including, but not limited to, the Company's common stock

price on the date of grant, expected stock price volatility over the expected life of units, and actual and projected exercise behavior. The determination of the fair value of the Company's stock options and restricted stock units with service and market vesting conditions is based on a variety of factors including, but not limited to, the Company's common stock price on the grant date, expected stock price volatility, risk free interest rate, dividend yield, and projected exercise behavior.

Upon adoption of ASU 2016-09, in the first quarter of fiscal 2018, the Company recognizes forfeitures of share-based awards as they occur in the period of forfeiture rather than estimating the number of awards expected to be forfeited at the grant date and subsequently adjusting the estimate when awards are actually forfeited. The change in accounting policy resulted in an adjustment to retained earnings of \$0.2 million as of October 1, 2017.

Stock options and restricted stock units that contain performance vesting or market vesting conditions are excluded from, diluted earnings per share computations until the applicable contingency is met as of the end of that reporting period.

The Company presents the cash flows from the tax benefits resulting from tax deductions in excess of the compensation cost recognized for those options (excess tax benefits) as an operating activity in the Consolidated Statements of Cash Flows.

### **3. Significant Contracts**

Historically, the Company had two material vendor contracts with the DoD, the Scrap Contract and the Surplus Contract.

Under the Scrap Contract, the Company is the remarketer of all DoD non-electronic scrap turned into the Defense Logistics Agency (DLA) available for sale within the United States, Puerto Rico, and Guam.

The Scrap contract was awarded to the Company in April 2016. The Scrap Contract has a 36-month base term that commenced in the first quarter of fiscal year 2017, with two 12-month extension options exercisable by the DLA. The base term of the Scrap contract will expire on September 30, 2019. The Company pays a revenue-sharing payment to the DLA under this contract equal to 64.5% of the gross resale proceeds of the scrap property, and the Company bears all of the costs for the sorting, merchandising and sale of the property. The contract contains a provision permitting the DLA to terminate the contract for convenience upon written notice to the Company. The Company commenced operations under this contract in the quarter ended December 31, 2016, the first quarter of fiscal year 2017.

Revenue from the Scrap Contract accounted for approximately 12.1% and 12.3% of the Company's consolidated revenue for the three months ended June 30, 2018 and 2017, respectively, and 10.0% and 10.9% of the Company's consolidated revenue for the nine months ended June 30, 2018 and 2017, respectively.

The Surplus Contract was a competitive-bid contract under which the Company acquired, managed and sold usable DoD surplus personal property turned into the DLA. Surplus property generally consisted of items determined by the DoD to be no longer needed, and not claimed for reuse by any federal agency, such as electronics, industrial equipment, office supplies, scientific and medical equipment, aircraft parts, clothing and textiles. The Surplus Contract required the Company to purchase all usable surplus property offered to the Company by the DoD at 4.35% of the DoD's original acquisition value. The Company retained 100% of the profits from the resale of the property and bore all of the costs for the merchandising and sale of the property. Included in Accrued expenses and other current liabilities in the Consolidated Balance Sheet is a liability to the DoD for the inventory that has not been paid for in the amount of \$0.9 million and \$6.8 million as of June 30, 2018 and September 30, 2017, respectively.

On October 11, 2017, the DLA published a Request for Technical Proposal ("RFTP") and draft Invitation for Bid ("IFB") for the sale of surplus, useable non-rolling stock property. The RFTP and IFB related to the DLA's award of two new term surplus contracts. On December 5, 2017, the DLA determined that the Company was not the high bidder for either of the two contracts. The Company made its final inventory purchase under the Surplus Contract during December 2017, and as of June 30, 2018 has completed its wind-down of the Surplus Contract.

Revenue from the Surplus Contract accounted for approximately 0.2% and 26.4% of the Company's consolidated revenue for the three months ended June 30, 2018 and 2017, respectively, and for approximately 16.2% and 27.8% of the Company's consolidated revenue for the nine months ended June 30, 2018 and 2017, respectively.

**4. Goodwill**

The goodwill of acquired companies is primarily related to the acquisition of an experienced and knowledgeable workforce. The following table presents goodwill balances and foreign currency translation adjustments to those balances during the nine months ended June 30, 2018:

Goodwill (in thousands)	CAG	GovDeals	Total
Balance at September 30, 2017	\$ 21,657	\$ 23,731	\$ 45,388
Translation adjustments	(72)	—	(72)
Balance at June 30, 2018	\$ 21,585	\$ 23,731	\$ 45,316

As part of the Company's fiscal year 2017 annual goodwill impairment assessment, the Company determined that certain events required performing a step one evaluation of goodwill to identify potential impairment. After performing the step one test, the Company concluded its remaining reporting units with goodwill had fair values, that substantially exceeded their respective book values as of July 1, 2017.

**5. Intangible Assets**

The components of identifiable intangible assets as of June 30, 2018 and September 30, 2017 are as follows:

	Useful Life (in years)	June 30, 2018			September 30, 2017		
		Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
(dollars in thousands)							
Patent and trademarks	3 - 10	793	(396)	397	943	(516)	427
Total intangible assets		\$ 793	\$ (396)	\$ 397	\$ 943	\$ (516)	\$ 427

Future expected amortization of intangible assets at June 30, 2018 is as follows:

Years ending September 30,	Future Amortization (in thousands)
2018 Remaining three months	\$ 19
2019	66
2020	64
2021	76
2022 and thereafter	172
Total	\$ 397

Intangible assets amortization expense was approximately \$0.02 million and \$0.3 million for the three months ended June 30, 2018 and 2017, respectively. Intangible assets amortization expense was approximately \$0.1 million and \$0.9 million for the nine months ended June 30, 2018 and 2017, respectively.

**6. Income Taxes**

On December 22, 2017, the Tax Act was signed into law. The Tax Act reduces the corporate tax rate from 35% to 21%. During the three months ending December 31, 2017, the Company revised its estimated annual effective tax rate to reflect this change in the statutory rate. The rate change is administratively effective at the beginning of the Company's 2018 fiscal year, using a blended rate of 24.53%. At June 30, 2018, the Company had not yet completed its accounting for the tax effects of the Tax Act; however, in the following cases the Company has made a provisional estimate of the Tax Act's effects. The Company recognized a tax benefit of \$3.5 million for the period ended December 31, 2017 as a result of adjusting its deferred tax balance

to reflect the new corporate tax rate. In addition, the Tax Act makes the alternative minimum tax (“AMT”) credit refundable in tax years beginning after 2017 and before 2022. As a result of this change, the Company reduced its valuation allowance on its AMT credits and recognized an income tax benefit of \$1.7 million.

The effect of the international provisions of the Tax Act, which establish a territorial tax system and subjects certain foreign earnings on which US tax is currently deferred to a one-time transition tax, is uncertain. As a result, the Company has not recorded any provisional amounts in its financial statements for the three and nine months ending June 30, 2018.

The Company’s interim effective income tax rate is based on management’s best current estimate of the Company’s expected annual effective income tax rate. The Company recorded a pre-tax loss in the first nine months of fiscal year 2018 and its corresponding effective tax rate is approximately -8.6% before recognition of a \$5.2 million tax benefit resulting from the new Tax Act netted against a \$0.1 million charge for interest related to the federal income tax examination for fiscal years 2013 through 2015 which was closed during the second quarter of 2018. The \$5.2 million benefit resulted from the reduction to the Company’s deferred tax balance to reflect the new corporate tax rate and reduction to its valuation allowance on AMT credits.

The Company applies the authoritative guidance related to uncertainty in income taxes. ASC 740 states that a benefit from an uncertain tax position may be recognized when it is more likely than not that the position will be sustained upon examination, including resolution of any related appeals or litigation processes, on the basis of technical merits. The Company records unrecognized tax benefits as a reduction to its deferred tax asset for its net operating loss carryforward. The Company identified no new uncertain tax positions during the nine months ended June 30, 2018. The Company’s policy is to recognize interest and penalties in the period in which they occur in the income tax provision. The Company and its subsidiaries file income tax returns in the U.S. federal jurisdiction, various state and local jurisdictions and in foreign jurisdictions, primarily Canada and the U.K. During the nine months ended June 30, 2018, the Company closed the examination of its federal and state income tax returns for fiscal years 2012 through 2015 and incurred a \$0.1 million tax charge to close out the examination of its federal income tax returns for fiscal years 2013 through 2015. As of June 30, 2018, none of the Company’s federal or state income tax returns are under examination. The statute of limitations for U.S. federal income tax returns for years prior to fiscal 2014 is now closed. However, certain tax attribute carryforwards that were generated prior to fiscal 2014 may be adjusted upon examination by tax authorities if they are utilized.

## **7. Stockholders’ Equity**

### **Share Repurchase Program**

The Company is authorized to repurchase issued and outstanding shares of its common stock under a share repurchase program approved by the Company’s Board of Directors. Share repurchases may be made through open market purchases, privately negotiated transactions or otherwise, at times and in such amounts as management deems appropriate. The timing and actual number of shares repurchased will depend on a variety of factors including price, corporate and regulatory requirements and other market conditions. The repurchase program may be discontinued or suspended at any time and will be funded using available cash. The Company’s Board of Directors reviews the share repurchase program from time to time, the last such review having occurred in May 2016. The Company did not repurchase shares under this program during the nine months ended June 30, 2018 or 2017. As of June 30, 2018, the Company may repurchase an additional \$10.1 million in shares under this program.

### **2006 Omnibus Long-Term Incentive Plan (the 2006 Plan)**

Under the 2006 Omnibus Long-Term Incentive Plan, or the 2006 Plan, as amended, 13,000,000 shares of common stock were available for issuance as of September 30, 2016. On February 23, 2017, at the Company’s annual meeting of stockholders, the stockholders approved amendments to the 2006 Plan to increase the number of shares available for issuance under the 2006 Plan by 3,300,000, to a total of 16,300,000 shares. The 2006 Plan has a fungible share pool so that awards other than options or stock appreciation rights granted would be counted as 1.5 shares from the shares reserved for issuance.

The maximum number of shares subject to options or stock appreciation rights that can be awarded under the 2006 Plan to any person is 1,000,000 per year. The maximum number of shares that can be awarded under the 2006 Plan to any person, other than pursuant to an option or stock appreciation right, is 700,000 per year. The Company issues stock appreciation rights with restrictions that lapse upon either the passage of time (service vesting), achievement of performance targets (performance vesting), or some combination of these conditions. For those stock appreciation rights with only service vesting

conditions, the Company recognizes compensation cost on a straight-line basis over the explicit service period. For awards subject to both performance and service vesting conditions, the Company starts recognizing compensation cost over the remaining service period, when it is probable the performance vesting condition will be met. The stock appreciation rights that include only service vesting conditions generally vest over a period of one to four years conditioned on continued employment for the incentive period.

#### **Cash-Settled Stock Appreciation Rights**

During the nine months ended June 30, 2018, the Company did not issue any cash-settled stock appreciation rights. During the nine months ended June 30, 2018, 87,084 cash-settled stock appreciation rights were exercised, and 358,660 cash-settled stock appreciation rights were forfeited. As of June 30, 2018, 1,007,889 cash-settled stock appreciation rights were outstanding. During fiscal year 2017, the Company issued 218,550 cash-settled stock appreciation rights at the price of \$10.30, and 234,313 cash-settled stock appreciation rights were forfeited. Cash-settled stock appreciation rights are recorded as liability awards.

#### **Stock Option Activity**

A summary of the Company's stock option activity for the nine months ended June 30, 2018, and year ended September 30, 2017 is as follows:

	<u>Options</u>	<u>Weighted-Average Exercise Price</u>
Options outstanding at September 30, 2016	1,708,487	\$ 13.91
Options granted	232,845	9.18
Options exercised	(12,421)	7.41
Options canceled	(223,938)	13.00
Options outstanding at September 30, 2017	1,704,973	13.43
Options granted	546,644	4.71
Options exercised	(1,762)	6.63
Options canceled	(297,147)	12.54
Options outstanding at June 30, 2018	<u>1,952,708</u>	<u>\$ 11.13</u>
Options exercisable at June 30, 2018	<u>1,137,727</u>	<u>\$ 14.88</u>

The intrinsic value and weighted average remaining contractual life in years of outstanding and exercisable options at June 30, 2018 is approximately \$1.1 million and 6.12 years, and \$0.06 million and 5.2 years, respectively, based on a stock price per share of \$6.55 on June 30, 2018. Over the last three years, volatility rates have ranged from 51.49% to 58.59%, the dividend rate has been 0%, risk free interest rates have ranged from 0.47% to 2.17% and expected forfeiture rates have ranged from 0% to 23.54%. Upon adoption of ASU 2016-09, beginning in the first quarter of fiscal 2018, the Company recognizes forfeitures of share-based awards as they occur in the period of forfeiture rather than estimating the number of awards expected to be forfeited at the grant date and subsequently adjusting the estimate when awards are actually forfeited.

**Restricted Share Activity**

A summary of the Company's restricted share activity for the nine months ended June 30, 2018, and year ended September 30, 2017 is as follows:

	Restricted Shares	Weighted- Average Fair Value
Unvested restricted shares at September 30, 2016	2,661,245	\$ 9.34
Restricted shares granted	849,352	8.78
Restricted shares vested	(748,266)	11.04
Restricted shares canceled	(571,900)	9.81
Unvested restricted shares at September 30, 2017	2,190,431	8.42
Restricted shares granted	517,561	6.59
Restricted shares vested	(604,620)	9.23
Restricted shares canceled	(501,122)	8.89
Unvested restricted shares at June 30, 2018	1,602,250	\$ 7.38

The intrinsic value and weighted average remaining contractual life in years of unvested restricted stock units at June 30, 2018 was approximately \$10.5 million and 8.32 years, respectively, based on a stock price per share of \$6.55 on June 30, 2018.

**8. Fair Value Measurement**

The Company measures and records in the accompanying consolidated financial statements certain assets and liabilities at fair value on a recurring basis. Authoritative guidance issued by the FASB establishes a fair value hierarchy for those instruments measured at fair value that distinguishes between assumptions based on market data (observable inputs) and the Company's assumptions (unobservable inputs). The hierarchy consists of three levels:

- Level 1 Quoted market prices in active markets for identical assets or liabilities;
- Level 2 Inputs other than Level 1 inputs that are either directly or indirectly observable; and
- Level 3 Unobservable inputs developed using estimates and assumptions developed by the Company, which reflect those that a market participant would use.

As of June 30, 2018, and September 30, 2017, the Company had no Level 1 or Level 2 assets or liabilities measured at fair value. As of September 30, 2017, the Company had financial assets that were measured at fair value and were classified as Level 3 assets within the fair value hierarchy. The Company elected to record the financial assets using the fair value option under ASC 825, *Financial Instruments*. These financial assets represented the value of rights the Company holds from its participation in certain principal transactions in the Company's commercial business, where a third-party partner owns the underlying assets to be sold, and the Company has contributed funds to the partner towards purchasing those underlying assets. These assets were included in Prepaid expenses and other current assets in the Consolidated Balance Sheets. The changes in financial assets measured at fair value for which the Company has used Level 3 inputs to determine fair value for the quarter ended June 30, 2018 are as follows (dollars in thousands):

	Level 3 Assets
Balance at September 30, 2017	\$ 491
Acquisition of financial assets	—
Settlements	(401)
Change in fair value of financial assets	(90)
Balance at June 30, 2018	\$ —

During the nine months ended June 30, 2018, the Company recognized a loss of approximately \$0.1 million on its financial assets.



When valuing its Level 3 assets, the Company gives consideration to asset condition, economic and/or market events, and other pertinent information that would impact its estimate of the expected generated proceeds. The valuation procedures are primarily based on management's projection of the value of the assets securing the financial investment. Management's estimation of the fair value of these assets is based on the best information available in the circumstances and may incorporate management's own assumptions around market demand for these assets which could involve a level of judgment, taking into consideration a combination of internal and external factors. Changes in fair value of the Company's Level 3 assets are recorded in Other operating expense in the Consolidated Statements of Operations.

The Company's financial assets not measured at fair value are cash and cash equivalents (which includes cash and commercial paper with original maturities of less than 90 days), certificates of deposit, accounts receivable, and a promissory note. The Company believes the carrying values of these instruments approximates fair value.

## 9. Defined Benefit Pension Plan

Certain employees of Liquidity Services UK Limited ("GoIndustry"), which the Company acquired in July 2012, are covered by the Henry Butcher Pension Fund and Life Assurance Scheme (the "HB Pension Fund"), a qualified defined benefit pension plan.

The net periodic benefit recognized for the three and nine months ended June 30, 2018 and 2017 included the following components:

Qualified Defined Benefit Pension Plan	Three Months Ended June 30,		Nine Months Ended June 30,	
	2018	2017	2018	2017
	(dollars in thousands)			
Service cost	\$ —	\$ —	\$ —	\$ —
Interest cost	158	148	493	436
Expected return on plan assets	(242)	(213)	(750)	(623)
Settlement cost	—	—	(8)	—
Total net periodic (benefit)	\$ (84)	\$ (65)	\$ (265)	\$ (187)

## 10. Guarantees

During the second quarter of 2015, the Company issued a guarantee to GoIndustry (the "Subsidiary") and the Trustees (the "Trustees") of the HB Pension Fund. Under the arrangement, the Company irrevocably and unconditionally (a) guarantees to the Trustees punctual performance by the Subsidiary of all its Guaranteed Obligations, defined as all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally in any capacity whatsoever) of the Company to make payments to the HB Pension Fund up to a maximum of 10 million British pounds, (b) undertakes with the Trustees that, whenever the Subsidiary does not pay any amount when due in respect of its Guaranteed Obligations, it must immediately on demand by the Trustees pay that amount as if it were the principal obligor; and (c) indemnifies the Trustees as an independent and primary obligation immediately on demand against any cost, charge, expense, loss or liability suffered or incurred by the Trustees if any payment obligation guaranteed by it is or becomes unenforceable, invalid or illegal; the amount of the cost, charge, expense, loss or liability under this indemnity will be equal to the amount the Trustees would otherwise have been entitled to recover on the basis of a guarantee. The guarantee is a continuing guarantee that will extend to the ultimate balance of all sums payable by the Company in respect of its Guaranteed Obligations. As of June 30, 2018, the Company's plan assets exceeded plan liabilities by approximately \$2.1 million. As of September 30, 2017, the Company's plan assets exceeded plan liabilities by approximately \$1.9 million. The funded status of the HB Pension Fund as of September 30, 2017, was disclosed in Note 12, Defined Benefit Pension Plan, to the consolidated financial statements included in the Company's Annual Report on Form 10-K for the year ended September 30, 2017.

## 11. Business Realignment Expenses

During the fourth quarter of fiscal year 2017, the Company began to restructure its CAG business. The restructuring plan resulted in a reduction in force across a number of departments, including Sales, Marketing and Operations in both the US and

**Liquidity Services, Inc. and Subsidiaries**  
**Notes to the Unaudited Consolidated Financial Statements — (Continued)**

in Europe. In connection with this restructuring, on September 25, 2017 the Company terminated the employment of the President of the CAG business and provided a severance package to the executive in the amount of \$0.3 million. Overall, severance costs associated with this restructuring amounted to approximately \$0.9 million. In addition, the restructuring plan calls for the closure of several offices and legal entities in Europe and Asia. Legal and administrative costs associated with the restructuring amounted to \$0.1 million.

The Company continued to implement its CAG cost cutting initiatives during the nine months ended June 30, 2018. In addition, as discussed in Note 3, Significant Contracts, the Company was not the high bidder for the new surplus contracts, and therefore completed winding down operations of the Surplus Contract during the nine months ended June 30, 2018. As a result, the Company recognized an additional \$1.5 million in restructuring costs during the first nine months of fiscal 2018, \$1.0 million of which related to severance and occupancy cost as a result of the loss of the Surplus Contract. Restructuring costs associated with the restructuring plan were recognized within the other operating expense (income) line item in the consolidated statement of operations. This activity is included within employee severance and benefit costs in the table below.

During fiscal year 2017, the Company reorganized its IronDirect business. As a result, the Company recorded approximately \$0.9 million of net expense related to the impairment of long-lived assets associated with the IronDirect business, as well as a fair value adjustment. The impairment was comprised of \$1.2 million of impairment of contract intangibles, and \$0.6 million of impairment of fixed assets. This expense was netted against a \$0.9 million reversal of an earn-out liability. In addition to these impairments, and the restructuring of its IronDirect business model, the Company terminated the employment of the President and incurred severance costs of approximately \$0.1 million, which is included within employee severance and benefit costs in the table below. During the first nine months ended June 30, 2018, the Company recorded restructuring costs of approximately \$0.1 million related to occupancy and certain onerous contract costs related to its IronDirect business.

On June 16, 2017, the Company entered into an agreement to sub-lease 18,412 square feet of office space at 6931 Arlington Road, Bethesda, Maryland. The sub-lease commenced September 29, 2017 and will expire April 30, 2023. On the sub-lease commencement date, the Company relocated its headquarters from 1920 L Street NW, Washington DC, to the new Bethesda location. The Company ceased using the previous location as of September 30, 2017 and recognized a \$2.0 million cease-use charge in its consolidated statements of operations at September 30, 2017, under the Other operating expenses line item. During the nine months ended June 30, 2018, the Company paid down the cease-use charge in the amount of approximately \$0.8 million. This activity is presented under occupancy cost in the table below.

During the nine months ended June 30, 2018, the Company recognized an additional \$0.5 million in severance cost primarily related to the restructuring of its Corporate IT department. This is recorded within the Corporate & Other line item below.

The table below sets forth the significant components of and activity in the liability for business realignment initiatives during the nine months ended June 30, 2018, on a segment and consolidated basis:

(in thousands)	Liability Balance at September 30, 2017	Business Realignment Expenses	Cash Payments	Liability Balance at June 30, 2018
Employee severance and benefit costs:				
CAG	\$ 793	\$ 910	\$ (1,644)	\$ 59
Corporate & Other	399	462	(850)	11
Total employee severance and benefit costs	1,192	1,372	(2,494)	70
Occupancy and other costs:				
CAG	—	675	(188)	487
Corporate & Other	1,988	35	(841)	1,182
Total occupancy and other costs	1,988	710	(1,029)	1,669
<b>Total business realignment</b>	<b>\$ 3,180</b>	<b>\$ 2,082</b>	<b>\$ (3,523)</b>	<b>\$ 1,739</b>

The \$2.1 million in employee severance and occupancy cost per the table above is recorded in Other operating expenses (income) in the Consolidated Statements of Operations. Of this \$2.1 million in cost, approximately \$0.9 million is associated

with general and administrative, \$0.2 million with sales and marketing, and \$1.0 million with technology and operations activities.

The Company expects that the remaining liability balance at June 30, 2018, of approximately \$1.7 million, will be paid during fiscal years 2018 and 2019.

## **12. Legal Proceedings**

*Howard v. Liquidity Services, Inc., et al., Civ. No. 14-1183 (D. D. C. 2014).*

On July 14, 2014, Leonard Howard filed a putative class action complaint in the United States District Court for the District of Columbia (the “District Court”) against the Company and its chief executive officer, chief financial officer, and chief accounting officer, on behalf of stockholders who purchased the Company’s common stock between February 1, 2012 and May 7, 2014. The complaint alleged that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 by, among other things, misrepresenting the Company’s growth initiative, growth potential, and financial and operating conditions, thereby artificially inflating the Company’s stock price, and sought unspecified compensatory damages and costs and expenses, including attorneys’ and experts’ fees. On October 14, 2014, the Court appointed Caisse de Dépôt et Placement du Québec and the Newport News Employees’ Retirement Fund as co-lead plaintiffs. The plaintiffs filed an amended complaint on December 15, 2014, which alleges substantially similar claims, but which does not name the chief accounting officer as a defendant. On March 2, 2015, the Company moved to dismiss the amended complaint for failure to state a claim or plead fraud with the requisite particularity. On March 31, 2016, the Court granted that motion in part and denied it in part. Only the claims related to the Company’s retail division were not dismissed. On May 16, 2016, the defendants answered the amended complaint, denying all allegations of wrong-doing. Plaintiffs’ class certification motion was granted, and defendants’ motion for partial summary judgment was denied, on September 6, 2017. On June 19, 2018, the parties reached agreement to settle this action, including the dismissal and release of all claims against all defendants, in exchange for the payment by the Company’s insurance carriers of \$17 million to plaintiffs and the class. The agreement was submitted to the District Court and was preliminarily approved on June 20, 2018. Final approval of the settlement will be decided at a hearing before the District Court scheduled for October 5, 2018 after notice to the class and other customary conditions are satisfied. There can be no assurance that the settlement will be approved and, even if approved, whether the conditions to effectiveness will be satisfied.

*In re Liquidity Services, Inc. Derivative Litigation, Civ. No. 2017-0080-JTL (Del. Ch.).*

On February 2, 2017, plaintiff David Girardi filed a putative derivative complaint in the Court of Chancery of the State of Delaware (the “Court of Chancery”), and on February 7, 2017, plaintiff Harold Slingerland filed a putative derivative complaint in the Court of Chancery. On March 9, 2017, plaintiffs Girardi and Slingerland filed a consolidated putative derivative complaint in the Court of Chancery, purportedly on the Company’s behalf. The consolidated complaint names as defendants the Company’s chief executive officer and chief financial officer, as well as certain other individuals who served on the Company’s Board of Directors between 2012 and 2014, and seeks recovery from those individuals, not from us. The complaint asserts that, among other things, the defendants breached their fiduciary duties to the Company and its stockholders by causing or allowing the Company to make the same misstatements that are alleged in the amended complaint in the Howard action, and for alleged trading in Company securities while in possession of material non-public information. On November 27, 2017, the Court of Chancery granted the defendants’ motion to dismiss.

Following the dismissal of the putative derivative action discussed above, former plaintiffs Girardi and Slingerland sent the Company a letter dated January 5, 2018 (the “Shareholder Demand”) demanding that the Board of Directors take action to remedy purported breaches of fiduciary duties allegedly related to the claims asserted in the above-discussed securities class action and derivative actions. The Company acknowledged the Shareholder Demand on January 22, 2018. The Company’s Board of Directors has delegated to a special committee of the Board, comprised of independent directors who are not named in the letter, the initial evaluation of and the formulation of recommendations to the Board with respect to the Shareholder Demand. The special committee has retained counsel to assist and advise it in connection with its work.

## **13. Segment Information**

The Company provides operating results in three reportable segments: GovDeals, Capital Assets Group (CAG), and Retail Supply Chain Group (RSCG). These three segments constitute 98% of the Company’s revenue as of June 30, 2018, and

each offers separately branded marketplaces to enable sellers to achieve channel marketing objectives to reach buyers. Across its segments, the Company offers its sellers two primary transaction models as well as a suite of services, and our revenues vary depending upon the models employed and the level of service required. A description of the reportable segments follows:

- The GovDeals reportable segment provides self-service solutions in which sellers list their assets for sale without relying on our services, and it consists of marketplaces that enable local and state government entities including city, county and state agencies, as well as commercial businesses located in the United States and Canada to sell surplus and salvage assets. GovDeals also offers a suite of services that includes asset sales and marketing services. This segment includes the Company's GovDeals.com and AuctionDeals.com marketplaces.
- The CAG reportable segment provides full-service solutions to sellers and it consists of marketplaces that enable federal government agencies as well as commercial businesses to sell surplus, salvage, and scrap assets. The assets that the Company receives as a contractor of the DLA of the Department of Defense (DoD) are sold in this segment. CAG also offers a suite of services that includes surplus management, asset valuation, and asset sales and marketing services. Commercial sellers are located worldwide. This segment includes the Company's Network International, GoIndustry DoveBid, and Government Liquidation marketplaces.
- The RSCG reportable segment consists of marketplaces that enable corporations located in the United States and Canada to sell surplus and salvage consumer goods and retail capital assets. RSCG also offers a suite of services that includes returns management, asset recovery, and eCommerce services. This segment includes the Company's Liquidation.com, Liquidation.com DIRECT, and Secondipity marketplaces.

Corporate & Other primarily consists of the Company's IronDirect and former TruckCenter operating segments which are not individually significant, as well as elimination adjustments. The TruckCenter business consisted of land-based, live auctions for fleet and transportation equipment. On January 30, 2017, the Company exited the TruckCenter land-based, live auction business in order to focus its time and resources on its ecommerce marketplace strategy. IronDirect offers buyers access to construction equipment, parts and services through a single ecommerce marketplace.

Decisions concerning the allocation of the Company's resources are made by the Company's Chief Operating Decision Maker ("CODM"), which is the Company's CEO, with oversight by the Board of Directors. The Company reports segment information based on the internal performance measures used by the CODM to assess the performance of each operating segment in a given period. In connection with that assessment, the CODM uses segment gross profit to evaluate the performance of each segment. Gross profit is calculated as total revenue less cost of goods sold and seller distributions.

The amount of our revenue that came from sales outside of the U.S. for the three months ended June 30, 2018 and 2017 was 14.5% and 10.0%, respectively. The amount of our revenue that came from sales outside of the U.S. for the nine months ended June 30, 2018 and 2017 was 12.9% and 11.3%, respectively.

The following table sets forth certain financial information for the Company's reportable segments and Corporate & Other:

**Liquidity Services, Inc. and Subsidiaries**  
**Notes to the Unaudited Consolidated Financial Statements — (Continued)**

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2018	2017	2018	2017
<b>GovDeals:</b>				
Revenue	\$ 8,421	\$ 7,464	\$ 22,554	\$ 19,901
Gross profit	\$ 7,795	\$ 7,023	\$ 20,927	\$ 18,670
<b>CAG:</b>				
Revenue	\$ 15,011	\$ 34,400	\$ 72,230	\$ 113,978
Gross profit	\$ 9,911	\$ 17,418	\$ 39,973	\$ 56,961
<b>RSCG:</b>				
Revenue	\$ 26,343	\$ 23,528	\$ 73,742	\$ 72,029
Gross profit	\$ 9,305	\$ 7,398	\$ 24,649	\$ 22,566
<b>Corporate &amp; Other:</b>				
Revenue	\$ 794	\$ 128	\$ 3,283	\$ 2,742
Gross profit	\$ 133	\$ (1,921)	\$ (694)	\$ (1,492)
<b>Consolidated:</b>				
Revenue	\$ 50,569	\$ 65,520	\$ 171,809	\$ 208,650
Gross profit	\$ 27,144	\$ 29,918	\$ 84,855	\$ 96,705

The following table presents a reconciliation between the Company's reportable segments and the Company's consolidated results:

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2018	2017	2018	2017
<b>Reconciliation:</b>				
Gross profit	\$ 27,144	\$ 29,918	\$ 84,855	\$ 96,705
Operating Expenses	30,284	38,680	100,027	122,125
Interest and other income, net	(47)	(189)	(776)	(291)
Provision (benefit) for income taxes	612	41	(3,824)	91
Net loss	\$ (3,705)	\$ (8,614)	\$ (10,572)	\$ (25,220)

#### 14. Subsequent Event

On July 10, 2018, the Company acquired all of the outstanding stock of Machinio Corporation, a privately owned company based in Chicago, Illinois, for net cash consideration of approximately \$16.7 million, equity consideration of approximately \$2.0 million, and contingent consideration payable in 2020 of up to \$5.0 million. Machinio operates a global online platform for listing used equipment for sale in the construction, machine tool, transportation, printing and agriculture sectors.

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

##### FORWARD-LOOKING STATEMENTS

*This document contains forward-looking statements. These statements are only predictions. The outcome of the events described in these forward-looking statements is subject to known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. These risks and other factors include but are not limited to the factors set forth in our Annual Report on Form 10-K for the fiscal year ended September 30, 2017 and subsequent filings with the Securities and Exchange Commission. You can identify forward-looking statements by terminology such as "may," "will," "should," "could," "would," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continues" or the negative of these terms or other comparable terminology. Although*

*we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. There may be other factors of which we are currently unaware or deem immaterial that may cause our actual results to differ materially from the forward-looking statements.*

*All forward-looking statements attributable to us or persons acting on our behalf apply only as of the date of this document and are expressly qualified in their entirety by the cautionary statements included in this document. Except as may be required by law, we undertake no obligation to publicly update or revise any forward-looking statement to reflect events or circumstances occurring after the date of this document or to reflect the occurrence of unanticipated events.*

*The following discussion should be read in conjunction with our consolidated financial statements and related notes and the information contained elsewhere in this document.*

## **Overview**

*About us.* We manage, value, and sell inventory and equipment for business and government clients by operating a network of leading ecommerce marketplaces that enable buyers and sellers to transact in an efficient, automated environment offering over 500 product categories. Our marketplaces provide professional buyers access to a global, organized supply of new, surplus, and scrap assets presented with digital images and other relevant product information. Additionally, we enable corporate and government sellers to enhance their financial return on offered assets by providing a liquid marketplace and value-added services that encompass the consultative management, valuation, and sale of surplus assets. Our broad range of services include program management, valuation, asset management, reconciliation, Return to Vendor ("RTV") and Returns Management Authorization ("RMA"), refurbishment and recycling, fulfillment, marketing and sales, warehousing and transportation, buyer support, and compliance and risk mitigation, as well as self-service tools. We organize the products on our marketplaces into categories across major industry verticals such as consumer electronics, general merchandise, apparel, scientific equipment, aerospace parts and equipment, technology hardware, energy equipment, industrial capital assets, fleet and transportation equipment and specialty equipment. Our network of marketplaces includes: [www.liquidation.com](http://www.liquidation.com), [www.govliquidation.com](http://www.govliquidation.com), [www.govdeals.com](http://www.govdeals.com), [www.networkintl.com](http://www.networkintl.com), [www.secondipity.com](http://www.secondipity.com), [www.go-dove.com](http://www.go-dove.com), [www.irondirect.com](http://www.irondirect.com), and [www.auctiondeals.com](http://www.auctiondeals.com). We have over 10,000 sellers, including Fortune 1000 and Global 500 organizations as well as federal, state, and local government agencies. We have three reportable segments, Retail Supply Chain Group (RSCG), Capital Assets Group (CAG), and GovDeals. See Note 13 in the Notes to the Consolidated Financial Statements for Segment Information.

We believe our ability to create liquid marketplaces for surplus and salvage assets generates a continuous flow of goods from our corporate and government sellers. This flow of goods in turn attracts an increasing number of professional buyers to our marketplaces. During the twelve months ended June 30, 2018, the number of registered buyers grew from 3,106,000 to 3,275,000, or approximately 5.4%.

On July 10, 2018, Liquidity Services acquired 100% of Machinio Corp., a privately-owned company based in Chicago, Illinois, with a second office in Berlin, Germany. Machinio operates a global online platform for listing used equipment for sale in the construction, machine tool, transportation, printing and agriculture sectors.

*Our revenue.* Substantially all of our revenue is earned through the following transaction models.

- *Purchase model.* Under our purchase transaction model, we recognize revenue within the Revenue line item on the Consolidated Statements of Operations from the resale of inventory that we purchased from sellers. We consider these sellers to be our vendors. We pay our vendors either a fixed amount or a portion of the net or gross proceeds received from our completed sales based on the value we receive from the sale, in some cases, after deducting a required return to us that we have negotiated with the seller. Because we are the primary obligor and take general and physical inventory risks and credit risk under this transaction model, we recognize as revenue the sale price paid by the buyer upon completion of a transaction. The proceeds paid by buyers also include transaction fees, referred to as buyer premiums. Revenue from our purchase transaction model accounted for approximately 63.4% and 67.2% of our total revenue for the three and nine months ended June 30, 2018, respectively. These amounts include revenue earned from the sale of property obtained under the Scrap Contract, which accounted for approximately 12.1% and 10.0% of our total revenue for the three and nine months ended June 30, 2018, respectively. The price we paid the DLA for the property purchased under the Scrap Contract is based on a revenue share model. One of our key operating metrics is gross merchandise volume, or GMV, a non-GAAP financial measure which we define as the total sales value of all merchandise sold by us or our sellers through our marketplaces and other channels during a given period of time. The merchandise sold under our

purchase transaction model accounted for approximately 19.4% and 23.5% of our GMV for the three and nine months ended June 30, 2018, respectively.

- *Consignment model — fee revenue.* Under our consignment transaction model, we enable our sellers to sell goods they own in our marketplaces and we charge them a commission fee based on the gross or net proceeds received from such sales. The revenue from our consignment transaction model is recognized within the Fee Revenue line item on the Consolidated Statements of Operations. Our commission fee revenue, which we refer to as seller commissions, represents a percentage of the sales price the buyer pays upon completion of a transaction. We vary the percentage amount of the seller commission depending on the various value-added services we provide to the seller to facilitate the transaction. For example, we generally increase the percentage amount of the commission if we take possession, handle, ship, or provide enhanced product information for the merchandise. In most cases we collect the seller commission by deducting the appropriate amount from the sales proceeds prior to the distribution to the seller after completion of the transaction. In addition to seller commissions, we also collect buyer premiums. Revenue from our consignment model accounted for approximately 34.7% and 29.8% of our total revenue for the three and nine months ended June 30, 2018, respectively. The merchandise sold under our consignment model accounted for approximately 80.6% and 76.5% of our total GMV for the three and nine months ended June 30, 2018, respectively.

We also earn non-consignment fee revenue, which is largely made up of service revenue related to our Surplus Contract. This revenue is recognized within the Fee revenue line item on our Consolidated Statements of Operations.

We collect a buyer premium on most of the transactions under the transaction models we offer to sellers. Buyer premiums are calculated as a percentage of the sale price of the merchandise sold and are paid to us by the buyer. Buyer premiums are in addition to the price of the merchandise.

*Industry trends.* We believe there are several industry trends positively impacting the growth of our business including: (1) the ability for businesses to conduct ecommerce via the Internet both in the United States and abroad, which continues to mature; (2) the increase in the volume of returned merchandise handled both online and in stores as online and omni-channel retail grow as a percentage of overall retail sales; (3) the increase in government regulations and the need for corporations to have sustainability solutions necessitating verifiable recycling and remarketing of surplus assets; (4) the increase in outsourcing by corporate and government organizations of disposition activities for surplus and end-of-life assets as they focus on reducing costs, improving transparency, compliance and working capital flows, and increasingly prefer service providers with a proven track record, innovative scalable solutions and the ability to make a strategic impact in the reverse supply chain, which we expect to increase our seller base; and (5) in the long-term we expect innovation in the retail supply chain will increase the pace of product obsolescence and, therefore, the supply of surplus assets.

## **Our Vendor Agreements**

*Our DoD agreements.* Historically, we had two material vendor contracts with the DoD, the Scrap Contract and the Surplus Contract.

- *Scrap Contract.* On April 8, 2016, the Defense Logistics Agency (DLA) awarded us the second Scrap Contract. Under the second Scrap Contract, we acquire scrap property from the DLA and pay the DLA a revenue-sharing payment equal to 64.5% of the gross resale proceeds. The Scrap Contract is a competitive-bid contract under which we acquire, manage and sell all non-electronic scrap property of the DoD turned into the DLA. Scrap property generally consists of items determined by the DoD to have no use beyond their base material content, such as metals, alloys, and building materials. We bear all of the costs for the sorting, merchandising and sale of the property. The second Scrap Contract has a 36-month base term, commencing in the first quarter of fiscal year 2017, with two 12-month extension options exercisable by the DLA. Transactions under this contract follow the purchase transaction model described above.

Resale of scrap property that we purchased under the Scrap Contract accounted for approximately 12.1% and 12.3% of our revenue for the three months ended June 30, 2018 and 2017, respectively, and approximately 10.0%, and 10.9% of our revenue for the nine months ended June 30, 2018 and 2017, respectively. The property sold under the Scrap Contract accounted for approximately 3.7% and 5.0% of our GMV for the three months ended June 30, 2018 and 2017, respectively, and approximately 3.7% and 4.7% of our GMV for the nine months ended June 30, 2018 and 2017, respectively. This contract is included within our CAG segment.

- *Surplus Contract.* The Surplus Contract was a competitive-bid contract under which we acquired, managed and sold usable DoD surplus personal property turned into the DLA. Surplus property generally consisted of items determined by the DoD to be no longer needed, and not claimed for reuse by any federal agency, such as electronics, industrial equipment, office supplies, scientific and medical equipment, aircraft parts, clothing and textiles. The Surplus Contract required us to purchase all usable surplus property offered to the Company by the DoD at 4.35% of the DoD's original acquisition value. We retained 100% of the profits from the resale of the property and bore all of the costs for the merchandising and sale of the property.

On October 11, 2017, the DLA published a Request for Technical Proposal (“RFTP”) and draft Invitation for Bid (“IFB”) for the sale of surplus, useable non-rolling stock property. The RFTP and IFB related to the DLA’s award of two new term surplus contracts. On December 5, 2017, the DLA determined that we were not the high bidder for either of the two contracts. As a result, we made our final inventory purchase under the Surplus Contract during December 2017, and as of June 30, 2018 had wound down the Surplus contract. The Surplus Contract accounted for \$74.6 million, or 27.6% of revenue in fiscal year 2017, \$58.1 million or 27.8% of revenue in the nine months ended June 30, 2017, and \$27.9 million or 16.2% of revenue in the nine months ended June 30, 2018. The property sold under the Surplus Contract accounted for approximately 0.1% and 8.5% of our GMV for the three months ended June 30, 2018 and 2017, respectively, and 5.4% and 9.3% of our GMV in the nine months ended June 30, 2018 and 2017. Transactions under the Surplus Contract followed the purchase transaction model described above. This contract is included within our CAG segment.

The lost profits from the wind-down and expiration of the Surplus Contract were offset by benefits from the reorganization and realignment efforts in fiscal 2017, as well as in the nine months ended June 30, 2018 (see Note 11 Business realignment expenses). The wind-down impact of the Surplus Contract is offset by the reorganization efforts within our CAG Commercial business and Corporate functions, and our realignment of our TruckCenter and IronDirect businesses.

We recorded approximately \$1.0 million of severance and occupancy cost during the nine months ended June 30, 2018, as a result of the restructuring and realignment efforts undertaken due to the loss of the Surplus Contract. The wind-down was completed as of June 30, 2018.

*Our commercial agreements.* We have a vendor contract with Amazon.com, Inc. under which we acquire and sell commercial merchandise. The property we purchased under this contract represented approximately 41.0%, and 25.0% of cost of goods sold for the three months ended June 30, 2018 and 2017, respectively, and approximately 28.5%, and 22.1% of cost of goods sold for the nine months ended June 30, 2018 and 2017, respectively. This contract is included within our RSCG segment.

## **Key Business Metrics**

Our management periodically reviews certain key business metrics for operational planning purposes and to evaluate the effectiveness of our operational strategies, allocation of resources and our capacity to fund capital expenditures and expand our business. These key business metrics include:

*Gross merchandise volume.* Gross merchandise volume, or GMV, is the total sales value of all merchandise sold by us or our sellers through our marketplaces or by us through other channels during a given period of time. We review GMV because it provides a measure of the volume of goods being sold in our marketplaces and thus the activity of those marketplaces. GMV also provides a means to evaluate the effectiveness of investments that we have made and continue to make, including in the areas of buyer and seller support, product development, sales and marketing, and operations. See Results of Operations for further information on GMV.

*Total registered buyers.* We grow our buyer base through a combination of marketing and promotional efforts. A person becomes a registered buyer by completing an online registration process on one of our marketplaces. As part of this process, we collect business and personal information, including name, title, company name, business address and contact information, and information on how the person intends to use our marketplaces. Each prospective buyer must also accept our terms and conditions of use. Following the completion of the online registration process, we verify each prospective buyer’s e-mail address and confirm that the person is not listed on any banned persons list maintained internally or by the U.S. federal government. After the verification process, which is completed generally within 24 hours, the registration is approved and activated, and the prospective buyer is added to our registered buyer list.

Total registered buyers, as of a given date, represent the aggregate number of persons or entities who have registered on one of our marketplaces. We use this metric to evaluate how well our marketing and promotional efforts are performing.



Total registered buyers exclude duplicate registrations, buyers who are suspended from utilizing our marketplaces and those buyers who have voluntarily removed themselves from our registration database. In addition, if we become aware of registered buyers that are no longer in business, we remove them from our database. As of June 30, 2018, and September 30, 2017, we had 3,275,000 and 3,171,000 registered buyers, respectively.

*Total auction participants.* For each auction we manage, the number of auction participants represents the total number of registered buyers who have bid one or more times in that auction. As a result, a registered buyer who bids, or participates, in more than one auction is counted as an auction participant in each auction in which he or she participates. Thus, total auction participants for a given period is the sum of the auction participants in each auction conducted during that period. We use this metric to allow us to compare our online auction marketplaces to our competitors, including other online auction sites and traditional on-site auctioneers. In addition, we measure total auction participants on a periodic basis to evaluate the activity level of our base of registered buyers and to measure the performance of our marketing and promotional efforts. During the three months ended June 30, 2018 and 2017, 512,000 and 577,000, respectively, total auction participants participated in auctions on our marketplaces. During the nine months ended June 30, 2018 and 2017, 1,580,000 and 1,740,000, respectively, total auction participants participated in auctions on our marketplaces. Largely as a result of the wind-down of the Surplus Contract, there has been a decrease in auction participants during fiscal 2018 compared with fiscal 2017.

*Completed transactions.* Completed transactions represents the number of auctions in a given period from which we have recorded revenue. Similar to GMV, we believe that completed transactions is a key business metric because it provides an additional measurement of the volume of activity flowing through our marketplaces. During the three months ended June 30, 2018 and 2017, we completed 121,000 and 134,000 transactions, respectively. During the nine months ended June 30, 2018 and 2017, we completed 361,000 and 407,000 transactions, respectively. Largely as a result of the wind-down of the Surplus Contract, there has been a decrease in completed transactions during fiscal 2018 compared with fiscal 2017.

## **Non-GAAP Financial Measures**

*EBITDA and Adjusted EBITDA.* EBITDA is a supplemental non-GAAP financial measure and is equal to net income plus interest and other (income) expense, net; provision for income taxes; and depreciation and amortization. Interest and other (income) expense, net, can include non-operating gains and losses, such as from foreign currency fluctuations and disposals of fixed assets. Our definition of Adjusted EBITDA differs from EBITDA because we further adjust EBITDA for stock-based compensation expense, acquisition costs such as transaction expenses and changes in earn out estimates, business realignment expense, deferred revenue purchase accounting adjustments, and goodwill and long-lived asset impairment.

We believe EBITDA and Adjusted EBITDA are useful to an investor in evaluating our performance for the following reasons:

- Depreciation and amortization expense primarily relates to property and equipment, and the amortization of intangible assets. These expenses are non-cash charges that have fluctuated significantly over the past five years. As a result, we believe that adding back these non-cash charges to net income is useful in evaluating the operating performance of our business on a consistent basis from year-to-year.
- As a result of varying federal and state income tax rates, we believe that presenting a financial measure that adjusts net income for provision for income taxes is useful to investors when evaluating the operating performance of our business on a consistent basis from year to year.
- The authoritative guidance for stock-based compensation requires all share-based payments to employees, including grants of employee stock options, restricted stock and stock appreciation rights to be recognized in the income statement based on their estimated fair values. We believe adjusting net income for this stock-based compensation expense is useful to investors when evaluating the operating performance of our business on a consistent basis from year to year.
- The authoritative guidance related to business combinations requires the recognition of contingent consideration so that it is recognized at the time of acquisition rather than when it is probable and disallows the capitalization of transaction costs. We believe adjusting net income for these acquisition related expenses is useful to investors when evaluating the operating performance of our business on a consistent basis from year to year.
- We believe adjusting net income for business realignment expense is useful to investors when evaluating the operating performance of our business on a consistent basis from year-to-year, as these expenses are outside our ordinary course of business.
- We believe isolating non-cash charges, such as amortization and depreciation, and other items, such as impairment costs incurred outside our ordinary course of business, provides additional information about our cost structure, and, over time, helps track our performance.

- We believe EBITDA and Adjusted EBITDA are important indicators of our operational strength and the performance of our business because they provide a link between profitability and operating cash flow.
- We also believe that analysts and investors use EBITDA and Adjusted EBITDA as supplemental measures to evaluate the overall operating performance of companies in our industry.

Our management uses EBITDA and Adjusted EBITDA:

- as measurements of operating performance because they assist us in comparing our operating performance on a consistent basis as they remove the impact of items not directly resulting from our core operations;
- for planning purposes, including the preparation of our internal annual operating budget;
- to allocate resources to enhance the financial performance of our business;
- to evaluate the effectiveness of our operational strategies; and
- to evaluate our capacity to fund capital expenditures and expand our business.

EBITDA and Adjusted EBITDA as calculated by us are not necessarily comparable to similarly titled measures used by other companies. In addition, EBITDA and Adjusted EBITDA: (a) do not represent net income or cash flows from operating activities as defined by GAAP; (b) are not necessarily indicative of cash available to fund our cash flow needs; and (c) should not be considered as alternatives to net income, income from operations, cash provided by operating activities or our other financial information as determined under GAAP.

We prepare Adjusted EBITDA by adjusting EBITDA to eliminate the impact of items that we do not consider indicative of our core operating performance. You are encouraged to evaluate these adjustments and the reasons we consider them appropriate for supplemental analysis. As an analytical tool, Adjusted EBITDA is subject to all of the limitations applicable to EBITDA. Our presentation of Adjusted EBITDA should not be construed as an implication that our future results will be unaffected by unusual or non-recurring items.

The table below reconciles income to EBITDA and Adjusted EBITDA from continuing operations for the periods presented.

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2018	2017	2018	2017
	(In thousands) (Unaudited)			
Net loss	\$ (3,705)	\$ (8,614)	\$ (10,572)	\$ (25,220)
Interest and other income, net	(47)	(189)	(776)	(291)
Provision (benefit) for income taxes	612	41	(3,824)	91
Depreciation and amortization	1,020	1,365	3,375	4,228
EBITDA	(2,120)	(7,397)	(11,797)	(21,192)
Stock compensation expense	1,436	1,563	4,134	5,462
Acquisition costs and impairment of long-lived assets*	204	886	204	886
Business realignment expenses*	249	(234)	2,073	906
Adjusted EBITDA	\$ (231)	\$ (5,182)	\$ (5,386)	\$ (13,938)

\* Acquisition costs and impairment of long-lived assets and business realignment expenses, which are excluded from Adjusted EBITDA, are included in Other operating expenses on the Statements of Operations. See Note 11 to Notes to Consolidated Financial Statements for further detail.

### Critical Accounting Estimates

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent assets and liabilities. A “critical accounting estimate” is one which is both important to the portrayal of our financial condition and results and requires management’s most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. We continuously evaluate our critical accounting estimates. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

*Revenue recognition.* For transactions in our ecommerce marketplaces, which generate substantially all of our revenue, we recognize revenue when all of the following criteria are met:

- a buyer submits the winning bid in an auction and, as a result, evidence of an arrangement exists, and the sale price has been determined;
- the buyer has assumed risks and rewards of ownership; and
- collection is reasonably assured.

Most of our sales are recorded subsequent to receipt of payment authorization, utilizing credit cards, wire transfers and PayPal, an Internet based payment system, as methods of payments. As a result, we are not subject to significant collection risk, as goods are generally not shipped before payment is received.

Fee revenue is principally revenue earned under the consignment model and is presented separately as it accounts for more than 10% of total revenue.

Transactions are also evaluated to determine whether we should report gross proceeds as revenue, for example, when we act as the principal in the arrangement, or if we should report revenue as our net commissions, for example, when we act as an agent. In arrangements in which we are deemed to be the primary obligor, bear physical and general inventory risk, and credit risk, we recognize as revenue the gross proceeds from the sale, including buyer's premiums. In arrangements in which we act as an agent or broker on a consignment basis, without taking general or physical inventory risk, revenue is recognized based on the sales commissions that are paid to us by the sellers for utilizing our services; in this situation, sales commissions represent a percentage of the gross proceeds from the sale that the seller pays to us upon completion of the transaction.

We have evaluated our revenue recognition policy related to sales under our purchase transaction model and determined it is appropriate to account for these sales on a gross basis. The following factors were most heavily relied upon in our determination:

- We are the primary obligor in the arrangement.
- We are the seller in substance and in appearance to the buyer; the buyer contacts us if there is a problem with the purchase. Only we and the buyer are parties to the sales contract and the buyer has no recourse to the supplier. If the buyer has a problem, he or she looks to us, not the supplier.
- The buyer does not and cannot look to the supplier for fulfillment or for product acceptability concerns.
- We have general inventory risk.
- We take title to the inventory upon paying the amount set forth in the contract with the supplier. Such amount is generally a percentage of the supplier's original acquisition cost and varies depending on the type of the inventory purchased or a fixed nominal amount under our Scrap contract.
- We are at risk of loss for all amounts paid to the supplier in the event the property is damaged or otherwise becomes unsaleable.

The amount of our revenue that came from sales outside of the U.S. for the three months ended June 30, 2018 and 2017 was 14.5% and 10.0%, respectively. The amount of our revenue that came from sales outside of the U.S. for the nine months ended June 30, 2018 and 2017 was 12.9% and 11.3%, respectively.

*Inventory.* Inventory consists of products available for sale and is valued at net realizable value. This valuation requires us to make judgments based on currently available information about expected recoverable value.

*Valuation of goodwill and other intangible assets.* We identify and value intangible assets that we acquire in business combinations, such as customer arrangements, customer relationships and non-compete agreements, that arise from contractual or other legal rights or that are capable of being separated or divided from the acquired entity and sold, transferred, licensed, rented or exchanged. The fair value of identified intangible assets is based upon an estimate of the future economic benefits expected to result from ownership, which represents the amount at which the assets could be bought or sold in a current transaction between willing parties, that is, other than in a forced or liquidation sale.

We test our goodwill for impairment annually or more frequently if events or circumstances indicate impairment may exist. Examples of such events or circumstances could include a significant change in business climate, a loss of significant sellers or buyers, or a significant decline in stock price. We make a qualitative evaluation about the likelihood of goodwill impairment to determine whether we should calculate the fair value of a reporting unit. If our evaluation indicates a likelihood of goodwill impairment in one of our four reporting units, which are the same as our four operating segments (RSCG, CAG, GovDeals, and IronDirect), we apply a two-step fair value-based test to assess goodwill for impairment of our four reporting units. The first step compares the fair value of a reporting unit to its carrying amount, including goodwill. If the carrying amount of the reporting unit exceeds its fair value, we perform the second step, which compares the carrying amount of the

reporting unit's goodwill to the implied fair value of the goodwill. If the fair value of the goodwill is less than the carrying amount, an impairment loss would be recorded in our statements of operations. Intangible assets with definite lives are amortized over their estimated useful lives and are also reviewed for impairment if events or changes in circumstances indicate that their carrying amount may not be realizable.

Our management makes certain estimates and assumptions in order to determine the fair value of net assets and liabilities, including, among other things, an assessment of market conditions, projected cash flows, cost of capital and growth rates, which could significantly impact the reported value of goodwill and other intangible assets. Estimating future cash flows requires significant judgment, and our projections may vary from cash flows eventually realized. The valuations employ a combination of present value techniques to measure fair value, corroborated by comparisons to estimated market multiples. These valuations are based on a discount rate determined by our management to be consistent with industry discount rates and the risks inherent in our current business model.

Determining the fair value of a reporting unit requires the exercise of significant judgment, including judgments about the appropriate discount rates, terminal growth rates, weighted average costs of capital, exit multiples, and the amount and timing of expected future cash flows. The judgments used in determining the fair value of our reporting units are based on significant unobservable inputs which causes the determination of the implied fair value of goodwill to fall within level three of the GAAP fair value hierarchy. The cash flows employed in the discounted cash flow analysis are based on the most recent budgets, forecasts, and business plans as well as various growth rate assumptions for years beyond the current business plan period. Discount rate assumptions are based on an assessment of the risk inherent in the future revenue streams and cash flows of the reporting unit. Various factors, including the failure to successfully implement our business plan for any of our reporting units, as well as other factors beyond our control, could have a negative effect on the fair value of such reporting unit, and increase the risk of further impairments of goodwill in the future.

A reporting unit represents a component of an operating segment that (a) constitutes a business, (b) has discrete financial information, and (c) has its performance reviewed by management. We have four reporting units-RSCG, CAG, GovDeals, and IronDirect.

As part of our fiscal year 2017 annual impairment assessment performed as of July 1, 2017, we believed that certain events required performing a step one evaluation of goodwill to identify potential impairment. As a result of the step one test, we determined that our reporting units with goodwill had fair values as of September 30, 2017, that substantially exceeded their respective book values.

We cannot predict the occurrence of certain future events that might adversely affect the reported value of goodwill and other intangible assets, which totaled 45.7 million at June 30, 2018. Such events may include strategic decisions made in response to economic and competitive conditions, the impact of the economic environment on our base of buyers and sellers or material negative changes in our relationships with material customers.

*Income taxes.* We account for income taxes using the asset and liability approach for measuring deferred taxes based on temporary differences between the financial statement and income tax bases of assets and liabilities existing at each balance sheet date using enacted tax rates for the years in which the taxes are expected to be paid or recovered. We recognize deferred tax assets to the extent that we believe that these assets are more likely than not to be realized. In making such determination, we consider all available positive and negative evidence to estimate whether future taxable income will be generated to permit use of the existing deferred tax asset. A significant piece of subjective negative evidence that we evaluated as of September 30, 2017 was the cumulative loss incurred over the three-year period ended September 30, 2017, and projected losses in the near-term future. Such objective evidence limited our ability to consider other subjective evidence, such as our projections for future growth.

On the basis of our evaluation of our deferred tax assets as of September 30, 2017, we recorded a charge of \$10.1 million to our valuation allowance during the fiscal year ended September 30, 2017. Staff Accounting Bulletin 118 provides guidance on accounting for the tax effects of the Tax Cuts and Jobs Act (the "Tax Act") signed into law on December 22, 2017. To the extent that a company's accounting for certain income tax effects of the Tax Act is incomplete but it is able to determine a reasonable estimate, it must record a provisional estimate in the financial statements. Accordingly, during the nine months ended June 30, 2018, we recorded a provisional reduction of \$10.1 million to our valuation allowance. The reduction is comprised of \$13.0 million for the re-measurement of deferred tax assets at the newly enacted tax rate and \$1.7 million for the recognition of tax credits resulting from the repeal of the alternative minimum tax, netted against a charge of \$4.6 million for net operating losses generated during the nine months ended June 30, 2018.

We apply the authoritative guidance related to accounting for uncertainty in income taxes. A benefit from an uncertain tax position may be recognized when it is more likely than not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, on the basis of the technical merits. During the nine months ended June 30, 2018, we did not identify new uncertain tax benefits.

We provide for income taxes based on our estimate of federal and state tax liabilities. These estimates include, among other items, effective rates for state and local income taxes, estimates related to depreciation and amortization expense allowable for tax purposes, and the tax deductibility of certain other items. Our estimates are based on the information available to us at the time we prepare the income tax provision. We generally file our annual income tax returns several months after our fiscal year-end. Income tax returns are subject to audit by federal, state and local governments, generally years after the returns are filed. These returns could be subject to material adjustments or differing interpretations of the tax laws.

*Stock-based compensation.* We recognize all share-based payments to employees, including grants of employee stock options, in the statements of operations based on their estimated fair values. We use the Black-Scholes option pricing model as well as a Monte Carlo simulation to estimate the fair values of certain share-based payments.

The above list is not intended to be a comprehensive list of all of our accounting estimates. In many cases, the accounting treatment of a particular transaction is specifically dictated by GAAP, with little need for management's judgment in their application. There are also areas in which management's judgment in selecting any available alternative would not produce a materially different result. See our audited financial statements and related notes, which contain accounting policies and other disclosures required by GAAP.

## **Components of Revenue and Expenses**

*Revenue.* We generate a large portion of our revenue from the proceeds of sales of merchandise held in inventory. We also generate commission revenue from sales in our marketplaces of merchandise that is owned by others. Our revenue recognition practices are discussed in more detail in the section above entitled "Critical Accounting Estimates."

*Cost of goods sold.* Cost of goods sold includes the costs of purchasing and transporting property for auction, as well as credit card transaction fees.

*Seller distributions.* Under the current Scrap Contract, we acquire scrap property from the DLA for resale and pay the DLA a revenue-sharing payment equal to 64.5% of the gross resale proceeds. We bear all of the costs for the sorting, merchandising and sale of the property.

*Technology and operations.* Technology expenses consist primarily of the cost of technical staff who develop, deploy, and maintain our marketplaces and corporate infrastructure. These personnel also develop and upgrade the software systems that support our operations, such as sales processing. Technology expenses also includes certain costs associated with our LiquidityOne platform. Because our marketplaces and support systems require frequent upgrades and enhancements to maintain viability, we have determined that the useful life for certain internally developed software is less than one year. As a result, we expense those costs as incurred. However, where we determine that the useful life of the internally developed software will be greater than one year, we capitalize development costs in accordance with ASC 350. As such, we are capitalizing certain development costs associated with our LiquidityOne platform. At the end of the first quarter of fiscal 2017, we determined that a seller and buyer management module of the LiquidityOne platform was ready for its intended use. As such, we began amortizing the associated capitalized costs during the second quarter of fiscal year 2017. During the fourth quarter of fiscal year 2017, we launched our Network International energy marketplace on the new LiquidityOne platform. As such, we determined that additional modules of the LiquidityOne platform were ready for their intended use and began amortizing the associated capitalized costs during the fourth quarter of fiscal year 2017. During the first quarter of fiscal 2018, we completed development of our new Return to Vendor ("RTV") module of the LiquidityOne platform and began amortizing the associated capitalized costs during that quarter.

Operations expenses consist primarily of operating costs, including buyer relations, shipping logistics and distribution center operating costs.

*Sales and marketing.* Sales and marketing expenses include the cost of our sales and marketing personnel as well as the cost of marketing and promotional activities. These activities include online marketing campaigns such as paid search advertising.

*General and administrative.* General and administrative expenses include all corporate and administrative functions that support our operations and provide an infrastructure to facilitate our future growth. Components of these expenses include

executive management and staff salaries, bonuses and related taxes and employee benefits; travel; headquarters rent and related occupancy costs; and legal and accounting fees. The salaries, bonus and employee benefits costs included as general and administrative expenses are generally more fixed in nature than our operating expenses and do not vary directly with the volume of merchandise sold through our marketplaces.

*Depreciation and amortization.* Depreciation and amortization expenses consist primarily of the depreciation and amortization of amounts recorded in connection with the purchase of furniture, fixtures and equipment, amortization of internally developed software, and amortization of intangible assets from our acquisitions.

*Other operating expenses (income).* Other operating expenses (income) includes the change in fair value of financial assets and liabilities, as well as business realignment expenses, including those associated with restructuring initiatives and the exit of certain business operations.

*Interest and other (income) expense, net.* Interest and other (income) expense, net, consists of interest income on the note receivable related to the sale of the Jacobs Trading business, impacts of foreign currency fluctuations, and gains and losses on the sale of fixed assets.

*Income taxes.* For interim income tax reporting, we estimate our annual effective tax rate and apply this effective tax rate to our year to date pre-tax (loss) income. Our effective income tax rate before discrete items was -8.6% for the nine months ended June 30, 2018. The 2018 effective tax rate differed from the statutory federal rate of 24.5% primarily as a result of the valuation allowance charge and the impact of foreign, state, and local income taxes and permanent tax adjustments.

## Results of Operations

The following table sets forth, for the periods indicated, selected statement of operations data expressed as a percentage of revenue:

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2018	2017	2018	2017
Revenue	100.0 %	100.0 %	100.0 %	100.0 %
Costs and expenses from operations:				
Cost of goods sold	38.5	46.4	44.1	46.6
Seller distributions	7.8	7.9	6.5	7.0
Technology and operations	27.0	30.0	27.8	30.0
Sales and marketing	16.6	12.6	14.5	13.1
General and administrative	13.4	13.4	12.7	12.9
Depreciation and amortization	2.0	2.1	2.0	2.0
Other operating expenses	0.9	1.0	1.3	0.5
Total costs and expenses	106.2	113.4	108.9	112.1
Loss from operations	(6.2)	(13.4)	(8.9)	(12.1)
Interest and other income, net	(0.1)	(0.3)	(0.5)	(0.1)
Loss before (provision) benefit for income taxes	(6.1)	(13.1)	(8.4)	(12.0)
Provision (benefit) for income taxes	1.2	0.1	(2.2)	—
Net loss	(7.3)%	(13.2)%	(6.2)%	(12.0)%

The following table presents segment GMV, revenue, gross profit, and gross profit margin for the periods indicated (dollars in thousands):

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2018	2017	2018	2017
<b>GovDeals:</b>				
GMV	\$ 85,415	\$ 75,527	\$ 225,996	\$ 195,866
Total revenue	8,421	7,464	22,554	19,901
Gross profit	7,795	7,023	20,927	18,670
Gross profit margin	92.6%	94.1 %	92.8 %	93.8 %
<b>CAG:</b>				
GMV	43,841	55,113	144,002	197,710
Total revenue	15,011	34,400	72,230	113,978
Gross profit	9,911	17,418	39,973	56,961
Gross profit margin	66.0%	50.6 %	55.3 %	50.0 %
<b>RSCG:</b>				
GMV	33,550	30,053	97,857	86,122
Total revenue	26,343	23,528	73,742	72,029
Gross profit	9,305	7,398	24,649	22,566
Gross profit margin	35.3%	31.4 %	33.4 %	31.3 %
<b>Corporate &amp; Other:</b>				
GMV	787	178	3,273	4,613
Total revenue	794	128	3,283	2,742
Gross profit	133	(1,921)	(694)	(1,492)
Gross profit margin	16.8%	(1,500.8)%	(21.1)%	(54.4)%
<b>Consolidated:</b>				
GMV	163,593	160,871	471,128	484,311
Total revenue	50,569	65,520	171,809	208,650
Gross profit	27,144	29,918	84,855	96,705
Gross profit margin	53.7%	45.7 %	49.4 %	46.3 %

**Three Months Ended June 30, 2018 Compared to Three Months Ended June 30, 2017**

**Segment Results**

*GovDeals.* Revenue from our GovDeals segment increased 12.8%, or \$1.0 million, due to additional sales volume from existing sellers and an increase in the number of new sellers. GMV from this segment increased 13.1%, or \$9.9 million, due to additional sales volume from existing sellers and an increase in the number of new sellers. Gross profit within this segment increased 11.0%, or \$0.8 million, to \$7.8 million for the three months ended June 30, 2018, from \$7.0 million for the three months ended June 30, 2017, due to the new business. As a percentage of revenue, gross profit decreased to 92.6% for the three months ended June 30, 2018, from 94.1% for the three months ended June 30, 2017. Gross profit is calculated as total revenue less cost of goods sold and seller distributions.

*CAG.* Revenue from our CAG segment decreased 56.4%, or \$19.4 million. Approximately \$17.2 million of this change was due to the wind-down of the Surplus contract. Additionally, the Scrap Contract experienced a lower volume of goods sold, as well as a change in mix of commodities to lower value commodities. The lower volume and unfavorable mix were partially offset by improved commodity prices. Also contributing to the decrease in revenue is a slight reduction in overall sales volume within our CAG Commercial business. GMV from our CAG segment decreased 20.5%, or \$11.3 million. The wind-down of the Surplus contract resulted in a decrease of approximately \$13.6 million. Also contributing to the decrease is

the lower volume of goods sold, as well as a change in mix of commodities to lower value commodities under the Scrap contract, partially offset by improved commodity prices. These overall reductions were partially offset by an increase in GMV of \$4.3 million from our CAG Commercial business. Gross profit within the CAG segment decreased 43.1%, or \$7.5 million, to \$9.9 million for the three months ended June 30, 2018, from \$17.4 million for the three months ended June 30, 2017. This decrease can primarily be attributed to the wind-down of the Surplus Contract and lower sales volumes described above. As a percentage of revenue, gross profit increased to 66.0% for the three months ended June 30, 2018 from 50.6% for the three months ended June 30, 2017.

*RSCG.* Revenue from our RSCG segment increased 12.0%, or \$2.8 million, due to increases in revenue from both the purchase and consignment transaction models. GMV from our RSCG segment increased 11.6%, or \$3.5 million, due to increases in GMV in both the purchase and consignment transaction models. Gross profit within the RSCG segment increased 25.8%, or \$1.9 million for the three months ended June 30, 2018, due to the increases in revenue described above. As a percentage of revenue, gross profit increased to 35.3%, from 31.4%.

*Corporate & Other.* The increase in revenue of \$0.7 million is attributable to increases in revenue from IronDirect. Gross profit within Corporate & Other increased \$2.1 million over the prior year, attributable to a \$1.9 million inventory reserve recorded within IronDirect during the third quarter of fiscal 2017.

### **Consolidated Results**

*Total Revenue.* Total consolidated revenue decreased \$14.9 million, or 22.7%, to \$50.6 million for the three months ended June 30, 2018, from \$65.5 million for the three months ended June 30, 2017, due to a \$19.4 million decrease in revenue from our CAG segment, partially offset by a \$2.8 million increase in revenue from our RSCG segment, a \$1.0 million increase in revenue from our GovDeals segment, and a \$0.7 million increase in revenue from Corporate & Other. Total consolidated GMV increased \$2.7 million, or 1.7%, to \$163.6 million for the three months ended June 30, 2018, from \$160.9 million for the three months ended June 30, 2017, primarily due to a \$3.5 million increase in GMV from our RSCG segment, a \$9.9 million increase in GMV from our GovDeals segment, and a \$0.6 million increase within Corporate & Other, partially offset by an \$11.3 million decrease in GMV from our CAG segment.

*Cost of goods sold.* Cost of goods sold decreased \$10.9 million, or 35.9%, to \$19.5 million for the three months ended June 30, 2018, from \$30.4 million for the three months ended June 30, 2017. Approximately \$10.3 million of this decrease is attributable to the wind-down of the Surplus Contract. In addition, cost of goods sold decreased \$1.4 million due to the exit of the TruckCenter land-based, live auction business, partially offset by an increase of approximately \$0.9 million from our IronDirect business. Resulting from the wind-down of the Surplus Contract, as a percentage of revenue, cost of goods sold decreased to 38.5% from 46.4%.

*Seller distributions.* Seller distributions decreased \$1.3 million, or 25.0%, to \$3.9 million for the three months ended June 30, 2018, from \$5.2 million for the three months ended June 30, 2017, due to lower sales under our Scrap Contract during the three months ended June 30, 2018. As a percentage of revenue, seller distributions decreased to 7.8%, from 7.9%.

*Technology and operations expenses.* Technology and operations expenses decreased \$5.9 million, or 30.1%, to \$13.7 million for the three months ended June 30, 2018, from \$19.6 million for the three months ended June 30, 2017, due to a decrease in operations related costs of approximately \$3.4 million, largely the result of business realignment activities. The remaining \$2.5 million reduction in these costs can be attributed to reductions in technology costs from internal IT labor, as well as lower fees from external contractors and other service providers. As a percentage of revenue, technology and operations expenses decreased to 27.0%, from 30.0%.

*Sales and marketing expenses.* Sales and marketing expenses increased \$0.1 million, or 1.2%, to \$8.4 million for the three months ended June 30, 2018, from \$8.3 million for the three months ended June 30, 2017, which is not significant. As a percentage of revenue, sales and marketing expenses increased to 16.6%, from 12.6%.

*General and administrative expenses.* General and administrative expenses decreased \$2.0 million, or 22.7%, to \$6.8 million for the three months ended June 30, 2018, from \$8.8 million for the three months ended June 30, 2017. This decrease includes reductions in overall staff cost of approximately \$1.8 million resulting from business realignment and restructuring initiatives. As a percentage of revenue, general and administrative expenses remained flat at 13.4%.

*Depreciation and amortization expenses.* Depreciation and amortization expenses decreased \$0.4 million, or 28.6%, to \$1.0 million for the three months ended June 30, 2018, from \$1.4 million for the three months ended June 30, 2017, due to an intangible asset having been fully amortized in fiscal 2017.



*Other operating expenses.* Other operating expenses reflected an expense of approximately \$0.5 million in the three months ended June 30, 2018, which consisted of restructuring costs (for further information, see Note 11 to the Consolidated Financial Statements included in this Report) of approximately \$0.3 million, and acquisition related costs of approximately \$0.2 million. In the three months ended June 30, 2017, Other operating expense of \$0.7 million represents \$0.9 million related to the impairment of long-lived assets, offset by a \$0.2 million adjustment to expenses relating to the exit of certain TruckCenter operations.

*Interest and other income, net.* Interest and other income, net, increased \$0.2 million over prior year, which is not significant.

*Provision (benefit) for income taxes.* Provision (benefit) for income taxes increased \$0.5 million, to a provision of \$0.6 million for the three months ended June 30, 2018, from a provision of \$0.04 million for the three months ended June 30, 2017, due to the impact of foreign, state, and local taxes and permanent tax adjustments.

*Net loss.* Net loss for the three months ended June 30, 2018 was \$3.7 million, compared to \$8.6 million for the three months ended June 30, 2017.

### ***Nine Months Ended June 30, 2018 Compared to Nine Months Ended June 30, 2017***

#### ***Segment Results***

*GovDeals.* Revenue from our GovDeals segment increased 13.3%, or \$2.7 million, due to additional sales volume from existing sellers and an increase in the number of new sellers. GMV from this segment increased 15.4%, or \$30.1 million, also due to additional sales volume from existing sellers and an increase in the number of new sellers. Gross profit within this segment increased 12.1%, or \$2.3 million, to \$20.9 million for the nine months ended June 30, 2018, from \$18.7 million for the nine months ended June 30, 2017, due to the new business. As a percentage of revenue, gross profit slightly decreased to 92.8%, from 93.8% in the prior year. Gross profit is calculated as total revenue less cost of goods sold and seller distributions.

*CAG.* Revenue from our CAG segment decreased 36.6%, or \$41.7 million. Approximately \$30.2 million of this change is due to the wind-down of the Surplus Contract. Additionally, the Scrap Contract experienced a lower volume of goods sold, as well as a change in mix of commodities to lower value commodities. The lower volume and unfavorable mix were partially offset by improved commodity prices. Also contributing to the decrease is lower sales volume within our CAG Commercial business for both purchase and consignment transaction models. GMV from our CAG segment decreased 27.2%, or \$53.7 million. The wind-down of the Surplus contract resulted in a decrease of approximately \$19.4 million. Approximately \$28.8 million of the decrease in GMV related to our CAG Commercial business for both purchase and consignment transaction models. A lower volume of goods sold under our Scrap Contract, as well as a change in mix of commodities to lower value commodities sold under that contract, partially offset by improved commodity prices, led to a further decrease in GMV. Gross profit within the CAG segment decreased 29.8%, or \$17.0 million, to \$40.0 million for the nine months ended June 30, 2018, from \$57.0 million for the nine months ended June 30, 2017. This decrease can be attributed to the wind-down of the Surplus Contract and lower sales volumes described above. As a percentage of revenue, gross profit increased to 55.3%, from 50.0%.

*RSCG.* Revenue from our RSCG segment increased 2.4%, or \$1.7 million. The increase is driven by the growth in consignment model transaction revenue. GMV from our RSCG segment increased 13.6%, or \$11.7 million. The increase is attributable to growth in our consignment model transaction GMV during fiscal 2018. The lower overall increase in revenue compared to the increase in GMV is due to a change in mix from purchase to consignment model transactions. Gross profit within the RSCG segment increased 9.2%, or \$2.1 million for the nine months ended June 30, 2018, due to the overall increase in revenue described above. As a percentage of revenue, gross profit increased to 33.4%, from 31.3%.

*Corporate & Other.* Revenue from Corporate & Other primarily relates to IronDirect and certain TruckCenter operations. The increase in revenue of \$0.5 million is made up of a \$2.4 million increase in revenue related to our IronDirect business, offset by a \$2.0 million decrease in revenue related to our decision to exit certain TruckCenter operations in January 2017. Gross profit within Corporate & Other increased \$0.8 million over prior year, attributable to a \$1.9 million inventory reserve recorded within IronDirect during the third quarter of fiscal 2017, and a \$0.4 million increase in gross profit related to our decision to exit certain TruckCenter operations in January 2017.

#### ***Consolidated Results***

*Total Revenue.* Total consolidated revenue decreased \$36.9 million, or 17.7%, to \$171.8 million for the nine months ended June 30, 2018, from \$208.7 million for the nine months ended June 30, 2017, due to a \$41.7 million decrease in revenue from our CAG segment, partially offset by a \$0.5 million increase in revenue from Corporate & Other, a \$2.7 million increase in revenue from our GovDeals segment, and a \$1.7 million increase in revenue from our RSCG segment. Total consolidated GMV decreased \$13.2 million, or 2.7%, to \$471.1 million for the nine months ended June 30, 2018, from \$484.3 million for the nine months ended June 30, 2017, due to a \$53.7 million decrease in GMV from our CAG segment, a \$1.3 million decrease within Corporate & Other, partially offset by a \$30.1 million increase in GMV from our GovDeals segment, and an \$11.7 million increase in GMV from our RSCG segment.

*Cost of goods sold.* Cost of goods sold decreased \$21.4 million, or 22.0%, to \$75.8 million for the nine months ended June 30, 2018, from \$97.2 million for the nine months ended June 30, 2017. Approximately \$18.7 million of this decrease is attributable to a lower volume of sales under our Surplus Contract during the nine months ended June 30, 2018, due to the wind-down of that contract. The remainder of this decrease is due to a lower volume of purchase transactions within our CAG Commercial business, as well as the exit of the TruckCenter land-based, live auction business in fiscal 2017, partially offset by increased cost of goods sold within our IronDirect business. As a percentage of revenue, cost of goods sold decreased to 44.1% of revenue, from 46.6%.

*Seller distributions.* Seller distributions decreased \$3.6 million, or 24.5%, to \$11.1 million for the nine months ended June 30, 2018, from \$14.7 million for the nine months ended June 30, 2017, due to lower sales under our Scrap Contract during the nine months ended June 30, 2018. As a percentage of revenue, seller distributions decreased to 6.5%, from 7.0%.

*Technology and operations expenses.* Technology and operations expenses decreased \$14.9 million, or 23.8%, to \$47.7 million for the nine months ended June 30, 2018, from \$62.6 million for the nine months ended June 30, 2017, due to a decrease in operations related costs of approximately \$9.5 million, largely the result of business realignment activities. The remaining \$5.4 million reduction in these costs can be attributed to a reduction in technology costs from internal IT labor, as well as lower fees from external contractors and other service providers. As a percentage of revenue, technology and operations expenses decreased to 27.8%, from 30.0%.

*Sales and marketing expenses.* Sales and marketing expenses decreased \$2.5 million, or 9.1%, to \$24.9 million for the nine months ended June 30, 2018, from \$27.4 million for the nine months ended June 30, 2017, due to a decrease in marketing labor and promotional spending as a result of certain business realignment and restructuring initiatives. As a percentage of revenue, sales and marketing expenses increased to 14.5%, from 13.1% in the prior year.

*General and administrative expenses.* General and administrative expenses decreased \$5.0 million, or 18.7%, to \$21.8 million for the nine months ended June 30, 2018, from \$26.8 million for the nine months ended June 30, 2017. Included within this decrease are reductions in overall staff cost of approximately \$3.8 million resulting from business realignment and restructuring initiatives. The remaining reduction in these costs can be attributed to lower non-income tax regulatory costs, and a decrease in certain lease costs. As a percentage of revenue, general and administrative expenses slightly decreased to 12.7%, from 12.9% in the prior year.

*Depreciation and amortization expenses.* Depreciation and amortization expenses decreased \$0.8 million, or 19.0%, to \$3.4 million for the nine months ended June 30, 2018, from \$4.2 million for the nine months ended June 30, 2017, due to an intangible asset having been fully amortized in fiscal 2017.

*Other operating expenses.* Other operating expenses reflected an expense of approximately \$2.2 million in the nine months ended June 30, 2018, which consisted of approximately \$2.1 million of restructuring cost (for further information, see Note 11 to the Consolidated Financial Statements included in this Report), \$0.2 million of acquisition related cost, a \$0.1 million loss on the value of a right we held from our participation in certain principal transactions in the CAG commercial business, slightly offset by \$0.1 million of other income. In the nine months ended June 30, 2017, Other operating expense of \$1.0 million represents \$0.9 million of expenses relating to the exit of certain TruckCenter operations, and a \$0.9 million impairment charge on long-lived assets, offset by a \$0.8 million increase in the value of a right we held from our participation in a principal transaction in the Company's CAG business.

*Interest and other income, net.* Interest and other income, net, increased \$0.5 million over prior year, to \$0.8 million for the nine months ended June 30, 2018. Interest and other income, net, includes a gain on sale of equipment of approximately \$0.5 million.

*Provision (benefit) for income taxes.* Provision (benefit) for income taxes increased \$3.9 million, to a benefit of \$3.8 million for the nine months ended June 30, 2018, from a provision of \$0.1 million for the nine months ended June 30, 2017,

due to a decrease in the deferred tax balance resulting from the newly enacted lower corporate tax rate, a reduction to the valuation allowance, and the impact of foreign, state, and local taxes and permanent tax adjustments.

*Net loss.* Net loss for the nine months ended June 30, 2018 was \$10.6 million, compared to \$25.2 million for the nine months ended June 30, 2017.

## **Liquidity and Capital Resources**

Historically, our primary cash needs have been working capital (including capital used for inventory purchases), which we have funded through cash generated from operations. As of June 30, 2018, we had approximately \$83.4 million in cash.

On July 10, 2018, Liquidity Services acquired 100% of Machinio Corp. The consideration paid to the sellers was approximately \$16.7 million in net cash, equity consideration of approximately \$2.0 million, and contingent consideration payable in 2020 in an amount up to \$5.0 million.

Throughout the quarter, we have continued to advance the design and development of our LiquidityOne platform, services and analytical tools intended to enable our clients to maximize bottom-line return and transform their supply chain into a high-performing business function. During the fourth quarter of fiscal year 2017, we launched our Network International energy marketplace on the new LiquidityOne platform. Beginning in fiscal 2019, we plan to launch further marketplaces onto the platform. We will continue to incur additional costs throughout the duration of this initiative to implement the new platform and educate our employees and clients about the initiative.

The effects of the international provisions of the Tax Act, which establishes a territorial tax system and subject certain foreign earnings on which US tax is currently deferred to a one-time transition tax is uncertain and requires additional analysis. As a result, the Company has not recorded any provisional amounts in the financial statements for the nine months ended June 30, 2018 and will re-evaluate its existing accounting position to indefinitely reinvest unremitted foreign earnings. The amount of such unremitted foreign earnings was approximately \$7.8 million as of June 30, 2018. As of June 30, 2018, and September 30, 2017, approximately \$15.4 million and \$14.9 million, respectively, of cash and cash equivalents was held overseas.

We are authorized to repurchase issued and outstanding shares of our common stock under a share repurchase program approved by our Board of Directors. Share repurchases may be made through open market purchases, privately negotiated transactions or otherwise, at times and in such amounts as management deems appropriate. The timing and actual number of shares repurchased will depend on a variety of factors including price, corporate and regulatory requirements and other market conditions. The repurchase program may be discontinued or suspended at any time and will be funded using our available cash. We did not repurchase shares under this program during the nine months ended June 30, 2018 or 2017. As of June 30, 2018, we may repurchase an additional \$10.1 million in shares under this program.

Most of our sales are recorded subsequent to receipt of payment authorization, utilizing credit cards, wire transfers and PayPal, an Internet based payment system, as methods of payments. As a result, we are not subject to significant collection risk, as goods are generally not shipped before payment is received.

### ***Changes in Cash Flows: Nine Months Ended June 30, 2018 Compared to Nine Months Ended June 30, 2017***

Net cash provided by operating activities was \$1.6 million for the nine months ended June 30, 2018, as compared to net cash used by operating activities of \$14.3 million for the nine months ended June 30, 2017. The \$15.9 million increase in cash provided by operations between periods was attributable to improved profitability as well as changes in working capital primarily from collections of receivables and sales of inventory.

Net cash used in investing activities was \$11.9 million for the nine months ended June 30, 2018, and \$6.3 million for the nine months ended June 30, 2017. Net cash used in investing activities for the nine months ended June 30, 2018 consisted of the purchase of certificates of deposit in the amount of \$10.0 million, as well as expenditures for capitalized software, purchases of equipment, and leasehold improvements. Net cash used in investing activities for the nine months ended June 30, 2017 consisted of expenditures for capitalized software, purchases of equipment, and leasehold improvements.

Net cash provided by financing activities was \$0.01 million for the nine months ended June 30, 2018, and net cash provided by financing activities was \$0.09 million for the nine months ended June 30, 2017. Net cash provided by financing activities consisted primarily of proceeds from the exercise of common stock options.

*Capital Expenditures.* Our capital expenditures consist primarily of capitalized software, computers and purchased software, office equipment, furniture and fixtures, and leasehold improvements. Capitalized software includes costs associated with our LiquidityOne platform. The timing and volume of such capital expenditures in the future will be affected by the addition of new customers or expansion of existing customer relationships, as well as our development of our LiquidityOne platform. We intend to fund those expenditures primarily from operating cash flows. Our capital expenditures for the nine months ended June 30, 2018 were \$2.7 million. As of June 30, 2018, we had no outstanding commitments for capital expenditures.

We believe that our existing cash and cash equivalents will be sufficient to meet our anticipated cash needs for at least the next 12 months. Our future capital requirements will depend on many factors including our rate of revenue growth, the timing and extent of spending to support development efforts, the expansion of sales and marketing activities, the development and deployment of new marketplaces, the introduction of new value-added services and the costs to establish additional distribution centers. Although we are currently not a party to any definitive agreement with respect to potential investments in, or acquisitions of, complementary businesses, products or technologies, we may enter into these types of arrangements in the future, which could also require us to seek additional equity or debt financing. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Additional debt would result in increased interest expense and could result in covenants that would restrict our operations. There is no assurance that such financing, if required, will be available in amounts or on terms acceptable to us, if at all.

#### **Off-Balance Sheet Arrangements**

We do not have any transactions, obligations or relationships that could be considered material off-balance sheet arrangements.

#### **Item 3. Quantitative and Qualitative Disclosures about Market Risk.**

*Interest rate sensitivity.* We had no debt as of June 30, 2018, and thus do not have any related interest rate exposure. Our investment policy requires us to invest funds in excess of current operating requirements. The principal objectives of our investment activities are to preserve principal, provide liquidity and maximize income consistent with minimizing risk of material loss.

*Exchange rate sensitivity.* Because of the number of countries and currencies we operate in, movements in currency exchange rates may affect our results. We report our operating results and financial condition in U.S. dollars. Our U.S. operations earn revenues and incur expenses primarily in U.S. dollars. Outside the United States, we predominantly generate revenues and expenses in the local currency. When we translate the results and net assets of these operations into U.S. dollars for reporting purposes, movements in exchange rates will affect reported results and net assets.

#### **Item 4. Controls and Procedures.**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer (Principal Financial Officer), as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

During the nine months ended June 30, 2018, as part of our LiquidityOne platform project, we continued to roll out a new enterprise resource planning system to additional areas of the company. The roll-out resulted in changes to certain internal controls over financial reporting. There have not been any further changes in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

As of June 30, 2018, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer (Principal Financial Officer), of the effectiveness of the design and operation of our disclosure controls and procedures. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer (Principal Financial Officer) concluded that our disclosure controls and procedures were effective and were operating to provide reasonable assurance that the information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer, principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

## PART II—OTHER INFORMATION

### Item 1. Legal Proceedings.

#### Howard v. Liquidity Services, Inc., et al., Civ. No. 14-1183 (D. D. C. 2014).

On July 14, 2014, Leonard Howard filed a putative class action complaint in the United States District Court for the District of Columbia (the “District Court”) against our Company and its chief executive officer, chief financial officer, and chief accounting officer, on behalf of stockholders who purchased our common stock between February 1, 2012 and May 7, 2014. The complaint alleged that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 by, among other things, misrepresenting our growth initiative, growth potential, and financial and operating conditions, thereby artificially inflating our stock price, and sought unspecified compensatory damages and costs and expenses, including attorneys’ and experts’ fees. On October 14, 2014, the Court appointed Caisse de Dépôt et Placement du Québec and the Newport News Employees’ Retirement Fund as co-lead plaintiffs. The plaintiffs filed an amended complaint on December 15, 2014, which alleges substantially similar claims, but which does not name the chief accounting officer as a defendant. On March 2, 2015, we moved to dismiss the amended complaint for failure to state a claim or plead fraud with the requisite particularity. On March 31, 2016, the Court granted that motion in part and denied it in part. Only the claims related to our retail division were not dismissed. On May 16, 2016, the defendants answered the amended complaint, denying all allegations of wrong-doing. Plaintiffs’ class certification motion was granted, and defendants’ motion for partial summary judgment was denied, on September 6, 2017. On June 19, 2018, the parties reached agreement to settle this action, including the dismissal and release of all claims against all defendants, in exchange for the payment by our insurance carriers of \$17 million to plaintiffs and the class. The agreement was submitted to the District Court and preliminarily approved on June 20, 2018. Final approval of the settlement will be decided at a hearing before the District Court scheduled for October 5, 2018 after notice to the class and other customary conditions are satisfied. There can be no assurance that the settlement will be approved and, even if approved, whether the conditions to effectiveness will be satisfied.

#### In re Liquidity Services, Inc. Derivative Litigation, Civ. No. 2017-0080-JTL (Del. Ch.).

On February 2, 2017, plaintiff David Girardi filed a putative derivative complaint in the Court of Chancery of the State of Delaware (the “Court of Chancery”), and on February 7, 2017, plaintiff Harold Slingerland filed a putative derivative complaint in the Court of Chancery. On March 9, 2017, plaintiffs Girardi and Slingerland filed a consolidated putative derivative complaint in the Court of Chancery, purportedly on our behalf. The consolidated complaint names as defendants our chief executive officer and chief financial officer, as well as certain other individuals who served on our Board of Directors between 2012 and 2014, and seeks recovery from those individuals, not from us. The complaint asserts that, among other things, the defendants breached their fiduciary duties to us and our stockholders by causing or allowing us to make the same misstatements that are alleged in the amended complaint in the Howard action, and for alleged trading in our securities while in possession of material non-public information. On November 27, 2017, the Court of Chancery granted the defendants’ motion to dismiss.

Following the dismissal of the putative derivative action discussed above, former plaintiffs Girardi and Slingerland sent us a letter dated January 5, 2018 (the “Shareholder Demand”) demanding that the Board of Directors take action to remedy purported breaches of fiduciary duties allegedly related to the claims asserted in the above-discussed securities class action and derivative actions. We acknowledged the Shareholder Demand on January 22, 2018. Our Board of Directors has delegated to a special committee of the Board, comprised of independent directors who are not named in the letter, the initial evaluation of and the formulation of recommendations to the Board with respect to the Shareholder Demand. The special committee has retained counsel to assist and advise in connection with its work.

### Item 1A. Risk Factors.

*In addition to the other information set forth in this report, you should carefully consider the factors set forth in Part I, “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended September 30, 2017, which could materially affect our business, financial condition or future results. The risks described in our Form 10-K are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results.*

## Item 6. Exhibits.

Exhibit No.	Description
2.1	<a href="#"><u>Stock Purchase Agreement, dated July 10, 2018, by and among the Company, Machinio, Corp., the stockholders of Machinio, Corp., and Shareholder Representative Services, LLC.*</u></a>
3.1	<a href="#"><u>Fourth Amended and Restated Certificate of Incorporation, incorporated herein by reference to Exhibit 3.1 to Amendment No. 2 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on January 17, 2006.</u></a>
3.2	<a href="#"><u>Amended and Restated Bylaws dated August 2, 2016.</u></a>
31.1	<a href="#"><u>Certification of Chief Executive Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934.</u></a>
31.2	<a href="#"><u>Certification of Chief Financial Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934.</u></a>
32.1	<a href="#"><u>Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
32.2	<a href="#"><u>Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
101	The following materials from the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2018, formatted in Extensible Business Reporting Language (XBRL): (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Operations, (iii) Consolidated Statements of Cash Flows, and (iv) Notes to Consolidated Financial Statements.

# Filed herewith.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on August 2, 2018.

LIQUIDITY SERVICES, INC.  
(Registrant)

By: /s/ William P. Angrick, III  
William P. Angrick, III  
*Chairman of the Board of Directors  
and Chief Executive Officer*

By: /s/ Jorge A. Celaya  
Jorge A. Celaya  
*Executive Vice President and Chief  
Financial Officer*

By: /s/ Samuel M. Guzman, Jr.  
Samuel M. Guzman, Jr.  
*Vice President and Chief Accounting  
Officer*



## STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this “**Agreement**”) is entered into as of July 10, 2018 by and among each of the individuals set forth on Annex I (each, a “**Seller**” and, collectively, the “**Sellers**”), Dmitriy Rokhfeld (“**Rokhfeld**”), Dan Pinto (“**Pinto**” and collectively with Rokhfeld, the “**Management Sellers**”), Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as representative, agent and attorney-in-fact for the Sellers, pursuant to Section 8.9 (the “**Representative**”), Machinio Corp., a Delaware corporation (the “**Company**”), and Liquidity Services, Inc., a Delaware corporation (the “**Buyer**”).

### INTRODUCTION

The Sellers own all of the issued and outstanding shares of capital stock of the Company (the “**Target Shares**”). The Sellers wish to sell, and the Buyer wishes to buy, all of the Target Shares on the terms and conditions set forth herein.

An index of defined terms as used in this Agreement is set forth in Article 10.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1 PURCHASE AND SALE; CLOSING

**1.1 Purchase and Sale.** Subject to the terms and conditions hereof, at the Closing, the Sellers shall sell, transfer, assign and deliver to the Buyer, and the Buyer shall purchase from the Sellers, all of the Target Shares free of any Liens, other than restrictions imposed under the applicable securities laws and the agreements among the Company and its stockholders set forth on Schedule 1.1.

#### **1.2 Purchase Price; Payments at Closing.**

(a) As used herein, the following terms shall have the following meanings:

“**Article 3 Indemnity Cap**” means \$8,000,000.

“**Closing Cash**” means, as of immediately prior to the Closing, all the cash, marketable securities, cash equivalents and deposits of the Company, wherever located.

“**Closing Indebtedness**” means any liability for indebtedness for borrowed money as of immediately prior to the Closing, including unpaid principal, interest thereon, accrued fees, prepayment fees, penalty fees and other charges relating to such indebtedness created, issued or incurred by the Company. For the avoidance of doubt, Closing Indebtedness shall include the following: (i) all obligations of the Company evidenced by notes, debentures, bonds or other similar instruments for the payment of which the Company is responsible or liable; (ii) all obligations of the Company issued or assumed for deferred purchase price payments associated with acquisitions, divestitures or other similar transactions; (iii) all obligations of the Company under leases required to be capitalized in accordance with Generally Accepted Accounting Principles (“**GAAP**”) as consistently applied by the Company; (iv) all accrued but unpaid obligations of the Company under severance plans or similar arrangements or any bonus, severance or similar payment that becomes payable as a result of the consummation of the transactions contemplated by this Agreement; (v) all obligations of the Company secured by Liens that are not Permitted Liens; (vi) any unfunded or

underfunded pension or other post-retirement liabilities. Closing Indebtedness shall be determined without taking into account the transactions to be completed on the date hereof in accordance herewith.

“**Closing Purchase Price**” means \$20,000,000 (i) *minus* an amount equal to the Closing Indebtedness, (ii) *plus* the amount, if any, by which the Closing Working Capital exceeds the Target Working Capital, or *minus* the amount, if any, by which the Closing Working Capital is less than the Target Working Capital (for clarity, in each case, without duplication in respect of any amounts included in the calculation of Closing Indebtedness). Pursuant to Section 1.2(e) below, \$2,004,844 of the Closing Purchase Price shall be paid in the form of Replacement Restricted Stock. Pursuant to Section 1.3(b) below, the Aggregate Option Cash Amount shall be paid out of the Closing Purchase Price to such option holders in such amounts as set forth in the Funds Flow Memo.

“**Closing Working Capital**” means those current assets (specifically including Closing Cash) identified on **Schedule 1.2** of the Disclosure Schedule minus the current liabilities identified on **Schedule 1.2** of the Disclosure Schedule as of immediately prior to the Closing. For the avoidance of doubt, **Schedule 1.2** of the Disclosure Schedule sets forth the methodology by which “Closing Working Capital” shall be determined in all instances for purposes of this Agreement. For purposes of clarity, the determination of Closing Working Capital calculated for use in the determination of Estimated Closing Purchase Price shall be consistent with the methodology used in the calculation set forth in **Schedule 1.2** of the Disclosure Schedule and the determination of Closing Working Capital calculated for use in the determination of the Closing Purchase Price pursuant to Section 1.7 hereof shall be consistent with the methodology used in both the calculation of Closing Working Capital used in the calculation of the Estimated Closing Purchase Price and also the calculation set forth in **Schedule 1.2** of the Disclosure Schedule. To the extent an item is part of the calculation of Closing Indebtedness, it shall not be a part of the calculation of Closing Working Capital.

“**Earnout Period**” means for the year from January 1, 2019 and ended December 31, 2019.

“**Earnout**” means an amount, up to a maximum of \$5,000,000, determined in accordance with that certain letter agreement by and among the Buyer, the Company, the Representative, the Sellers and the Management Sellers of even date herewith.

“**2019 EBITDA**” means the earnings of the Company (or if the Company is merged into Buyer or an Affiliate of Buyer the earnings of the division of Buyer or its Affiliate which operates the business previously conducted by the Company, calculated as if the Company was being operated as a separate and independent entity) for the Earnout Period before interest expense and income, income taxes, depreciation and amortization determined in accordance with GAAP, consistently applied. In determining 2019 EBITDA, such calculation: (i) shall be computed without regard to “extraordinary items” of gain or loss (as defined in GAAP but for clarity “extraordinary items” shall include any and all costs incurred in connection with any settlement of any of the claims set forth in the definition of Release Conditions below that are recovered by the Company or Buyer as Losses pursuant to Article 7); (ii) shall not include any gains or losses or profits realized from the sale of assets other than in the ordinary course of business; (iii) shall, with the approval of Management Sellers (which shall not be unreasonably withheld) with respect to any budgetary projections or forecasts, provide for an allocation of reasonable direct overhead costs for services provided by Buyer to the Company (for example, allocations for finance, insurance costs human resources and legal/corporate services) in accordance with GAAP, provided that 2019 EBITDA shall not include any allocations for indirect costs solely associated with Buyer (for example public company costs or

general advertising costs not associated with the Company); and (iv) shall include a pro forma adjustment to recognize the GAAP deferred revenues on the books of the Company immediately prior to Closing to the extent not realized under GAAP following the Closing.

**“Escrow Account”** means the account established by the Escrow Agent to hold the Escrow Amount and any earnings thereon pursuant to the Escrow Agreement.

**“Escrow Agent”** means Citizens Bank.

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

**“Escrow Amount”** means the amount in the Escrow Account at the time of determination.

**“Escrow Early Release Amount”** means \$1,000,000 released from the Escrow Account to Sellers on the earliest of (i) the first anniversary of the Closing, but only if all of the Release Conditions have been satisfied, (ii) if the Escrow Early Release Amount was not eligible to be released at the first anniversary of the Closing and was not released in connection therewith and in the event the Release Conditions have been satisfied prior to the second anniversary of the Closing, the day after the Release Conditions have been satisfied, and (iii) the second anniversary of the Closing (regardless of whether the Release Conditions have been satisfied), in each case less the amount of any claims made by Buyer (and not resolved as of such release date) against the Escrow Account prior to the applicable release date and less the amount of any amounts paid to Buyer out of the Escrow Account prior to such release date (including any amounts paid or payable in connection with satisfaction of the Release Conditions to any third party), provided the foregoing shall be subject to the terms and conditions of the Escrow Agreement.

**“Escrow Secondary Release Amount”** means \$1,000,000 released from the Escrow Account to Sellers on the earliest of (i) if the Escrow Early Release Amount was not eligible to be released at the first anniversary of the Closing and was not released in connection therewith, the second anniversary of the Closing, but only if all of the Release Conditions have been satisfied, (ii) if the Escrow Secondary Release Amount was not eligible to be released at the second anniversary of the Closing and was not released in connection therewith, the third anniversary of the Closing, but only if all of the Release Conditions have been satisfied, and (iii) the fourth anniversary of the Closing (regardless of whether the Release Conditions have been satisfied), in each case less the amount of any claims made by Buyer (and not resolved as of such release date but without duplication of any claims withheld from the Escrow Early Release Amount) against the Escrow Account prior to such release date and less the amount of any amounts paid to Buyer out of the Escrow Account prior to such release date (including any amounts paid or payable in connection with the satisfaction of the Release Conditions to any third party), specifically excluding any amounts withheld from the Escrow Early Release Amount, provided the foregoing shall be subject to the terms and conditions of the Escrow Agreement.

**“Escrow Final Release Date”** means the fifth anniversary of the Closing, provided the foregoing shall be subject to the terms and conditions of the Escrow Agreement.

**“Escrow Release Amounts”** means, collectively, the Escrow Early Release Amount and Escrow Secondary Release Amount.

**“Estimated Closing Purchase Price”** means the Closing Purchase Price, determined using the estimate of the Closing Working Capital and the Closing Indebtedness set forth in the Estimated Closing Purchase Price Certificate.

**“Funds Flow Memo”** means that certain flow of funds memo delivered by Sellers to Buyer indicating the amount and the wire transfer information for payments to be made by Buyer hereunder.

**“Release Conditions”** means (i) with respect to the Specific Indemnity Claims, (a) each of the Specific Indemnity Claims that is not as of the Closing Date a pending action, proceeding or investigation before any governmental authority shall have been withdrawn by the third party in writing, or otherwise settled (with a release of the Company and Buyer, satisfactory to them in their reasonable discretion), and (b) each of the Specific Indemnity Claims that is a pending action, proceeding or investigation before any governmental authority as of the Closing Date shall have been settled (with a release of the Company and Buyer, satisfactory to them in their reasonable discretion) or a court of competent jurisdiction shall have entered a final, non-appealable judgment or order that is binding on such third party with respect to such claim, and (ii) no third party claim shall have been made to or against the Company or Buyer that is then pending and unresolved asserting conduct by the Company prior to the Closing Date (a) that would, if proved, constitute a breach of the Specific Indemnity Representations and (b) that is the same or substantially similar to the conduct of the Company alleged by the third parties making the Specific Indemnity Claims.

**“Sellers’ Expenses”** means all fees and expenses incurred by the Management Sellers and/or the Company, other than those incurred on behalf of Buyer, in connection with the transactions contemplated by this Agreement, including the fees and expenses of counsel (including, without limitation, legal counsel for Management Sellers), investment bankers, brokers, accountants and other experts incident to the negotiation and preparation of this Agreement and the consummation of the transactions described in this Agreement including, specifically, without limitation, the fees and expenses of European Internet Ventures.

**“Target Working Capital”** means the target working capital amount identified on **Schedule 1.2**.

(a) Except where the context clearly requires to the contrary: (i) each reference in this Agreement to a designated “Section,” “Article,” “Schedule,” “Exhibit” or “Annex” is to the corresponding Section, Article, Schedule, Exhibit or Annex of or to this Agreement; (ii) instances of gender- or entity-specific usage (e.g., “his,” “her,” “its,” “person” or “individual”) shall not be interpreted to preclude the application of any provision of this Agreement to any individual or entity; (iii) the word “or” shall not be applied in its exclusive sense; (iv) “including” shall mean “including, without limitation”; (v) references to laws, regulations and other governmental rules, as well as to contracts, agreements and other instruments, shall mean such rules and instruments as in effect as of the date of this Agreement; (vi) references to “\$” or “dollars” shall mean the lawful currency of the United States; (vii) references to “Federal” or “federal” shall be to laws, agencies or other attributes of the United States (and not to any state or locality thereof); (viii) the meaning of the terms “domestic” and “foreign” shall be determined by reference to the United States; (ix) references to “days” shall mean calendar days; references to “business days” shall mean any day other than Saturday, Sunday or any day on which commercial banks in Bethesda, MD are authorized to close; (x) references to months or years shall be to the actual calendar months or years at issue (taking into account the actual number of days in any such month or year); (xi) days, business days and times of day shall be determined by reference to local time in Bethesda, MD; and (xii) the English language version of this

Agreement shall govern all questions of interpretation relating to this Agreement, notwithstanding that this Agreement may have been translated into, and executed in, other languages.

(b) At least three (3) business days prior to the Closing, the Company, on behalf of all of the Sellers, will furnish to the Buyer (i) a certificate (the “**Estimated Closing Purchase Price Certificate**”) setting forth a good faith estimate of the Closing Working Capital and the Closing Indebtedness and a calculation of the Closing Purchase Price based thereon, and (ii) a payoff letter from each holder of such outstanding Closing Indebtedness (A) indicating the amount required to discharge such Closing Indebtedness at Closing and (B) if such Closing Indebtedness is secured by any liens (statutory or otherwise), security interests, mortgages, restrictions, pledges, hypothecations, preferences, priorities, security agreements or other encumbrances of any kind or nature (including any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing and any assignment or deposit arrangement in the nature of a security device) (collectively, “**Liens**”), agreeing to release such Liens, other than Permitted Liens, upon receipt of the payoff amount.

(c) At the Closing, the Buyer shall make the following payments and deliveries in an amount, in the aggregate, equal to the Estimated Closing Purchase Price, by wire transfer of immediately available funds or by delivery of Buyer restricted common stock or options:

(i) first, to the respective holders of the Closing Indebtedness, if any, the amounts specified in the payoff letters delivered by the Company to the Buyer pursuant to Section 1.2(c) above and as designated by Sellers on the Funds Flow Memo;

(ii) second, to such payees of the Sellers’ Expenses, to the extent that such payment is not duplicative and there has not been a corresponding equivalent reduction in the calculation of the Closing Working Capital, as directed in writing by the Company prior to the Closing and as designated by Sellers on the Funds Flow Memo;

(iii) third, to the Escrow Agent pursuant to the Escrow Agreement, an amount equal to \$3,000,000.00 (the “**Initial Escrow Amount**”) to be held in the Escrow Account until the Escrow Final Release Date (or earlier disbursed per its terms, with the Escrow Release Amounts (if any) released on the first, second, third or fourth anniversary of the Closing or other date, as applicable, and the Buyer and Representative shall each execute and deliver to the Escrow Agent joint written instructions to effect the Escrow Release Amounts, if applicable) in accordance with the terms of the Escrow Agreement to secure the Sellers’ obligation to provide indemnification pursuant to Article 7 and each of the Seller’s obligations under Section 1.7(e);

(iv) fourth, delivery of the Replacement Restricted Stock (as defined in Section 1.3(e) and pursuant to the timing of delivery set forth in Section 1.3(e)) to Rokhfeld and Pinto with such Replacement Restricted Stock with an aggregate value as set forth in the Funds Flow Memo;

(v) fifth, delivery to each In-the-Money Option holder in such amounts as set forth in the Funds Flow Memo; and

(vi) sixth, the remainder to each Seller as designated by Sellers on the Funds Flow Memo.

### **1.3 Replacement Options / Replacement Restricted Stock.**

(a) Definitions.

(i) **“Company Options”** means options to purchase shares of Company common stock, whether or not issued under the Company Option Plan.

(ii) **“In-the-Money Option”** means any portion of a Company Option other than Out-of-the-Money Options and Unvested Company Options.

(iii) **“Out-of-the-Money Option”** means, with respect to any Company Option, a Company Option, whether or not vested and exercisable, that has an exercise price payable in respect of a share of Company capital stock issuable pursuant to such Company Option that is greater than the Common / Preferred Amount Per Share.

(iv) **“Unvested Company Options”** means the portion of any Company Options that are unexpired, unexercised, unvested and outstanding as of immediately prior to the Closing Date, other than Out-of-the-Money Options.

(v) **“Common / Preferred Amount Per Share”** means (i) the quotient of (A) \$20,000,000 divided by (B) the Fully Diluted Share Number.

(vi) **“Fully Diluted Share Number”** means the sum of (i) the aggregate number of shares of Company Common Stock issued and outstanding immediately prior to the Closing Date (whether or not such shares of Company Common Stock are then subject to restrictions on transfer), plus (ii) the aggregate number of shares of Company Common Stock for which all In-the-Money Options issued, outstanding and unexercised immediately prior to the Closing Date are exercisable, plus (iii) the aggregate number of shares of Company Common Stock issuable pursuant to the Company’s certificate of incorporation upon conversion of all shares of Company Preferred Stock outstanding immediately prior to the Closing Date.

(vii) **“Aggregate Strike Price Spread”** shall mean, with respect to a holder of Assumed Options or Replacement Options, as the case may be, the aggregate amount of (1) in the case of Assumed Options, the number of shares of Company Common Stock subject to such Assumed Options multiplied by the Common / Preferred Amount Per Share or, in the case of Replacement Options, the number of shares of Buyer common stock subject to such Replacement Options, multiplied by the fair market value of Buyer common stock less (2) the aggregate exercise price therefor.

(viii) **“Aggregate Option Value”** shall mean the aggregate value of all Replacement Options as of the Closing based upon the difference between the strike price of the applicable Replacement Option and the fair market value of Buyer’s common stock determined by using the average of the closing prices of Buyer’s common stock as reported by Yahoo! Finance for the ten trading days immediately preceding the Closing Date.

(b) In connection with the Closing, each In-the-Money Option shall be cancelled and such Seller holding such Company Option shall be entitled to receive for each such In-the-Money Option an amount in cash therefor as set forth on Schedule 1.3(b), subject to applicable withholding. The aggregate amount paid by the Company for cancellation of all In-the-Money Options shall be \$307,875.15 (**“Aggregate Option Cash Amount”**). As of the Closing, each Out-of-the-Money Option that is outstanding immediately prior to the Closing Date shall be cancelled and extinguished without any present or future right to receive any consideration therefor. The Company shall cause such payments to such Sellers in relation to cancelled In-the-Money Options to be made via payroll payment not more than thirty (30) calendar days after the Closing.

(c) As of the Closing, Buyer shall assume (i) the Company 2014 Stock Incentive Plan (the **“2014 Plan”**) and (ii) each Unvested Company Option held by an employee of the Company that is outstanding immediately prior to the Closing (**“Assumed Options”**). Each Assumed Option

shall be converted into an option issued by Buyer to purchase common stock of Buyer (a “**Replacement Option**”) under the 2014 Plan on the same vesting schedule and other terms as such Assumed Option was subject to under the 2014 Plan except (A) the number of shares of Buyer common stock purchasable under such Assumed Option shall equal the sum of (1) the number of shares of Company Common Stock subject to such Assumed Option multiplied by the Common / Preferred Amount Per Share divided by (2) the fair market value of a share of Buyer’s common stock, and (B) the exercise price of the Replacement Option shall be adjusted so that the Replacement Option has the same Aggregate Strike Price Spread as the Assumed Option (in the aggregate) immediately prior to Closing, in each case the fair market value of Buyer’s common stock shall be determined by using the average of the closing prices of Buyer’s common stock as reported by Yahoo! Finance for the ten (10) trading days immediately preceding the Closing Date. Notwithstanding anything herein to the contrary, the exercise price of each of the Assumed Options, the number of shares of Buyer Common Stock issuable pursuant to each Assumed Option and the terms and conditions of each Replacement Option shall in all events be determined with respect to any Assumed Options granted to an employee who is a U.S. resident or citizen, in material compliance with Section 409A of the Code, and in the case of any Company Option that qualifies as an “incentive stock option” within the meaning of Section 422 of the Code, Section 424(a) of the Code. Documentation reflecting the issuance of the Replacement Options shall be issued to such option holders as soon as practicable following Closing but in any event within ten (10) business days following Closing.

(d) Prior to the Closing Date, the Company shall take all action necessary to effect the treatment of Company Options provided for under this Agreement under the Company Option Plan, all Contracts governing the terms of all Company Options and under any other plan or arrangement to which the Company is a party or by which the Company may be bound, including by giving any required notice and obtaining any required consent contemplated thereby. The Company shall consult with Buyer with respect to the form and content of any notices to any holders of Company Options or solicitation of any consents or other approvals from the holders of any Company Options prior to delivery thereof.

(e) As of the Closing Date, each share of restricted stock of the Company, which shares have solely been issued to Rokhfeld and Pinto in equal amounts and equal 10% of the Fully Diluted Share Number in the aggregate, that is outstanding immediately prior to the Closing Date shall be cancelled in exchange for the right to receive a share of restricted common stock of Buyer (the “**Replacement Restricted Stock**”). The Replacement Restricted Stock shall be subject to a holding period of twelve (12) months. Each of Rokhfeld and Pinto shall be issued that number of shares of Replacement Restricted Stock equal to the amount set forth in the Funds Flow Memo divided by \$6.75, which represents the average of the closing prices of Buyer’s common stock as reported by Yahoo! Finance for the ten (10) trading days immediately preceding the Closing Date. The Replacement Restricted Stock shall be issued in the name of Rokhfeld and Pinto with the Buyer’s transfer agent, Computershare, at Closing, and Rokhfeld and Pinto shall have the option to have the Replacement Restricted Stock certificated and placed with Royal Bank of Canada following Closing. In connection with the issuance of the Replacement Restricted Stock, each of Rokhfeld and Pinto shall be required to establish an account with Royal Bank of Canada and to take such further actions as may be required by Buyer for the issuance of the Replacement Restricted Stock.

1. **The Closing.** The consummation of the transactions contemplated hereby (the “**Closing**”) shall take place electronically, on the date hereof (the “**Closing Date**”) by delivery via electronic transmission (with originals sent via overnight courier service if requested) of the documents to be delivered at or prior to the Closing and payments to be made in accordance with this Agreement, or in such other manner as the parties hereto may mutually agree in writing.

2. **Deliveries at Closing by the Sellers and the Company.** At the Closing, and upon satisfaction or waiver of the conditions set forth in Section 6.2, the Sellers and the Company will

deliver or cause to be delivered the instruments, consents, certificates and other documents required of them by Section 6.1.

3. **Deliveries at Closing by the Buyer.** At the Closing, and upon satisfaction or waiver of the conditions set forth in Section 6.1, the Buyer will deliver or cause to be delivered the instruments, consents, certificates and other documents required of it by Section 6.2.

4. **Determination of Closing Purchase Price.**

(a) Within ninety (90) calendar days of the Closing Date, the Buyer will

deliver to the Representative and the Escrow Agent a certificate (the “**Closing Purchase Price Certificate**”) executed by the authorized signatory of the Buyer setting forth a calculation of the Closing Purchase Price and an itemized statement of the Closing Working Capital (using the methodology in **Schedule 1.2** of the Disclosure Schedule) and the Closing Indebtedness.

(b) If the Representative delivers written notice (the “**Disputed Items Notice**”) to the Buyer and the Escrow Agent within thirty (30) calendar days after receipt by the Representative of the Closing Purchase Price Certificate, stating that the Representative objects to any items in the Closing Purchase Price Certificate, specifying in reasonable detail the basis for such objection and setting forth the Representative’s proposed modification to the Closing Purchase Price, the Representative and the Buyer shall use their good faith efforts to resolve and finally determine and agree upon the Closing Purchase Price as promptly as practicable. The Disputed Items Notice shall specify those items or amounts as to which the Representative disagrees, and the Representative, on behalf of all Sellers, shall be deemed to have agreed with (and the Independent Accountant, if any, shall be deemed to be bound by) all other items and amounts contained in the Closing Purchase Price Certificate delivered pursuant to Section 1.7(a).

(c) If the Representative and the Buyer are unable to agree upon the Closing Purchase Price within twenty (20) calendar days of delivery of the Disputed Items Notice, the Representative and the Buyer will agree to select the Chicago office of Grant Thornton LLP or such other firm of independent accountants of regional standing to which the parties agree, which shall in all cases be independent from the parties hereto (the “**Independent Accountant**”), to resolve the items set forth in the Disputed Items Notice (the “**Disputed Items**”). If the Buyer and the Representative are unable to agree or those firms are unable to serve upon the selection of the Independent Accountant, either party may petition a court to select the Independent Accountant. The Buyer and the Representative shall promptly provide the Escrow Agent with a joint written notice of the selection of the Independent Accountant. The Independent Accountant will (i) resolve the Disputed Items and (ii) make a determination of the Closing Purchase Price using the calculations set forth in the Closing Purchase Price Certificate, as modified only by the Independent Accountant’s resolution of the Disputed Items or the agreement of the Buyer and the Representative. In making such calculation, the Independent Accountant shall consider only those items or amounts in the Closing Purchase Price Certificate, the calculation of the Closing Working Capital and the Closing Indebtedness as to which the Buyer has disagreed in the Disputed Items Notice, the agreement of the Buyer and the Representative on any of the foregoing and the Independent Accountant’s determination with respect to each unresolved Disputed Item shall not be in excess of, nor less than, the greatest or lowest value, respectively, claimed for that particular item in the Closing Purchase Price Certificate or in the Disputed Items Notice. The determination of the Independent Accountant will be made within fortyfive (45) calendar days of being selected. Such determination shall be final and binding upon the Buyer and the Sellers and shall be deemed a final arbitration award that is binding on the Buyer and the Sellers, and none of the Buyer or the Sellers may seek further recourse to courts or other tribunals with respect thereto, other than to enforce such determination. The fees and expenses of the Independent Accountant shall be allocated to the Buyer, on the one hand, and the Sellers, on the other, based upon the percentage that the portion of the contested amount not awarded to each party bears to the amount actually contested by such party, as determined by the Independent Accountant.



(d) If the Representative does not deliver the Disputed Items Notice to the Buyer and the Escrow Agent within thirty (30) calendar days of receipt by the Representative of the Closing Purchase Price Certificate, the Closing Purchase Price specified in the Closing Purchase Price Certificate will be final and binding upon the parties, including all Sellers.

(e) At such time as the Closing Purchase Price is finally determined, either (i) the Buyer shall pay to the Sellers an aggregate amount equal to the excess, if any, of the Closing Purchase Price over the Estimated Closing Purchase Price or (ii) the Representative and the Buyer shall instruct the Escrow Agent to pay the Buyer from the Escrow Account an aggregate amount equal to the excess, if any, of the Estimated Closing Purchase Price over the Closing Purchase Price. Any payment pursuant to this Section 1.7(e) shall be made within five (5) business days after the Closing Purchase Price has been finally determined hereunder by wire transfer by the Buyer or the Escrow Agent, as the case may be, of immediately available funds to the account of such other party as may be designated in writing by such other party.

(f) The Representative, Sellers and their accountants, lawyers and other representatives will be given full access during business hours and upon reasonable notice to (and shall be allowed to make copies of) the relevant books and records of the Company and to any personnel of the Company reasonably requested by such persons, in each case in connection with the final determination of the Closing Purchase Price or any dispute relating thereto.

## **1.8 Earn-Out Payment.**

(a) In order to allow the Representative to prepare its calculations, Buyer will permit the Sellers, the Representative and its counsel, accountants and other advisors reasonable access during business hours and upon reasonable notice throughout the 2019 year, to (and shall be allowed to make copies of) the relevant books and records of the Company and to any personnel of the Company reasonably requested by such persons.

(b) On or before the earlier of (i) the date that Buyer publishes its results for 2019 and (ii) one hundred twenty (120) calendar days following the end of the Earnout Period, Buyer will prepare and deliver to the Representative its determination of the Earnout and 2019 EBITDA along with its calculations of the Earnout and 2019 EBITDA (the "**Earnout Statement**") based upon the Company's financial statements or, if applicable, Buyer's financial statements of the Company's division as publicly reported. The Earnout Statement shall be certified by an authorized officer of Buyer to be true, correct and complete at the time it is delivered to the Representative. Thereafter, the Earnout Statement delivered to the Representative will be final and binding on the parties unless the Representative objects within thirty (30) calendar days after receipt thereof by: (i) notifying Buyer in writing of each objection; and (ii) delivering to Buyer a statement describing the basis for each objection along with the Representative's calculation of the Earnout and the 2019 EBITDA. Any component of Buyer's Earnout Statement that is not the subject of an objection by the Representative will be final and binding on the parties and will be the basis for the Earnout payment described below in this Section 1.8. If Buyer agrees in writing with the objection(s) of the Representative and the Representative's calculation of the Earnout and 2019 EBITDA, then the Representative's calculation of the 2019 EBITDA will be final and binding on the parties and within fifteen (15) calendar days after receipt of the Representative's objection(s) and calculations of the Earnout and 2019 EBITDA, the Earnout (as determined using the Representative's calculation of the Earnout and 2019 EBITDA) will be paid by Buyer to the Sellers based on each Seller's Pro Rata Share. If Buyer does not agree with the objection(s) of the Representative or the Representative's calculation of the Earnout and 2019 EBITDA, then Buyer must, within fifteen (15) calendar days after receipt of the Representative's objection(s) and calculations, notify the Representative, in writing, of its disagreement.

(c) The parties will use reasonable efforts to resolve any dispute described in this Section 1.8 within twenty (20) calendar days following Buyer's notice to the Representative that it disagrees with the Representative's objection(s) or the Representative's calculations of the Earnout and 2019 EBITDA. If the parties are able to resolve any disputes as to the calculation of the 2019 EBITDA within such twenty (20) calendar day period, then the Earnout (as calculated using the 2019 EBITDA agreed to among the Representative and Buyer) will be paid by Buyer to the Sellers based on each Seller's Pro Rata Share within fifteen (15) calendar days after the resolution of the items in dispute as to the 2019 EBITDA.

(d) If, however, the parties are unable to resolve such disputes within twenty (20) calendar days following Buyer's notice to the Representative that it disagrees with the Representative's objection(s) or the Representative's calculations of the Earnout and 2019 EBITDA, then by written notice from the Representative or Buyer to the other the disagreement may be submitted for resolution to the Independent Accountant. Within fifteen (15) calendar days after the Independent Accountant has been retained, the Representative and Buyer will furnish, at their own expense (in the case of the Representative, on behalf of the Sellers), to the Independent Accountant and the other party a written statement of their position with respect to each matter in dispute. Within ten (10) business days after the expiration of such fifteen (15) calendar day period, the Representative and Buyer may deliver to the Independent Accountant and to the other party their response to the other's position on each matter in dispute. With each submission, the Representative and Buyer may also furnish to the Independent Accountant such other information and documents as they deem relevant or such information and documents as may be requested by the Independent Accountant with appropriate copies or notification being given to the other party. The Independent Accountant may, at its discretion, conduct a conference concerning the disagreement with the Representative and Buyer, at which conference each party will have the right to present additional documents, materials and other information and to have present its advisors, counsel and accountants. In connection with such process, there will be no hearings, oral examinations, testimony, depositions, discovery or other similar proceedings conducted by any party or by the Independent Accountant. The Independent Accountant will be directed to promptly, and in any event within forty-five (45) calendar days after their appointment pursuant to this Section 1.8, render their decision on the disputed items. The decision of the Independent Accountant on each item in dispute may not be greater than the higher position of Buyer or the Representative with respect to such item nor lower than the lower position of Buyer or the Representative with respect to such item. The Independent Accountant's determination as to each item in dispute will be final and binding on the parties and will be set forth in a written statement delivered to the Representative and Buyer, which will include the Independent Accountant's determination of the Earnout and the calculations of the 2019 EBITDA (the "**Independent Accountant's Report**"). The Independent Accountant will also determine the proportion of its fees and expenses to be paid by each of the Representative (on behalf of the Sellers) and Buyer based primarily on the degree to which the Independent Accountant has accepted the positions of the respective parties. Each of the Representative (on behalf of the Sellers) and Buyer will pay their respective portion of the fees of the Independent Accountant directly to the Independent Accountant.

(e) Within fifteen (15) calendar days after receipt of the Independent Accountant Report, the Earnout (as determined by the Independent Accountant) will be paid by Buyer to the Sellers based on each Seller's Pro Rata Share or as otherwise agreed among the Sellers.

(f) Buyer acknowledges and agrees that (i) the Earnout shall not be subordinated in favor of any lender, and (ii) Buyer shall not take any actions to circumvent the Earnout, directly or indirectly.

(g) The parties hereto understand and agree that (i) the contingent rights to

receive any Earnout shall not be represented by any form of certificate or other instrument, are not transferable, except by operation of laws relating to descent and distribution, divorce and community property, and do not constitute an equity or ownership interest in Buyer or the Company, (ii) Sellers shall not have any rights as a security holder of Buyer or the Company as a result of Sellers' contingent rights to receive any Earnout hereunder, and (iii) no interest is payable with respect to any Earnout.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES CONCERNING EACH SELLER**

As a material inducement to Buyer to enter into this Agreement, each Seller hereby, severally and not jointly, represents and warrants to the Buyer that each of the statements contained in this Article 2, with respect to itself, himself or herself, when read together with and qualified by the disclosure schedules attached to this Agreement (the "**Disclosure Schedule**") is true and correct as of the date hereof.

**2.1 Title.** Each such Seller is the beneficial and record owner, and has good and marketable title to, the Target Shares set forth opposite his or her name on Annex I attached hereto (the percentage of such Target Shares owned by such Seller being his, her or its "**Pro Rata Share**"). At the Closing, such Seller will transfer and deliver his or her Target Shares to the Buyer free and clear of all Liens, other than restrictions imposed under applicable securities laws and the agreements among the Company and its stockholders set forth on Schedule 1.1 (which agreements will be terminated immediately prior to Closing).

**2.2 Power and Authority.** Such Seller has the legal capacity in the case of an individual, and the requisite power and authority in all other cases, to execute and deliver this Agreement and the other Transaction Documents to which such Seller is a party and to perform its obligations hereunder and thereunder. Any stockholder that is not a natural person has, to the extent necessary, duly and validly authorized the execution, delivery and performance of this Agreement and the other Transaction Documents to which such Seller is a party. All actions or proceedings necessary to be taken by or on the part of such Seller to authorize and permit the due and valid execution and delivery by such Seller of this Agreement and the other Transaction Documents to which such Seller is a party, the performance by such Seller of its respective obligations hereunder and thereunder and the consummation by such Seller of the transactions contemplated hereunder and thereunder to which it is a party have been taken.

**2.3 No Conflict.** Such Seller's execution, delivery and performance of this Agreement and the other agreements, instruments and documents to be executed and delivered by such Seller as contemplated hereby will not result in any material violation of, be in material conflict with or constitute a material default under any law, statute, regulation, rule, ordinance, contract, agreement or instrument, judgment, decree or order to which such Seller is a party or by which such Seller or his or her assets are bound.

**2.4 Consents and Approvals.** Except as set forth on **Schedule 3.15** of the Disclosure Schedule, no consent, order, approval, authorization, declaration or filing from or with any governmental authority or third party is required on the part of such Seller to permit such Seller to fulfill all of such Seller's material obligations under this Agreement and the other agreements, instruments and documents of such Seller contemplated hereby.

**2.5 Validity and Enforceability.** Assuming the valid execution and delivery by the other parties hereto and thereto, this Agreement is, and each of the other agreements, instruments and documents to be executed and delivered by such Seller as contemplated hereby will be when executed and delivered by such Seller, the valid and binding obligations of such Seller, enforceable against such Seller in accordance with

their respective terms, subject, however, to applicable bankruptcy, insolvency and other laws affecting the rights and remedies of creditors and to general equitable principles.

**2.6 Certain Litigation.** There is no action, proceeding or investigation pending to which such Seller is a party or, to such Seller's actual knowledge, threatened against such Seller, which questions the validity of this Agreement or would prevent such Seller from consummating the transactions contemplated hereby or the transactions contemplated by the other Transaction Documents to which it is a party.

### **2.7 Investment Representations.**

As a material inducement to Buyer to enter into this Agreement, Rokhfeld and Pinto hereby, severally and not jointly, each represents and warrants to the Buyer that each of the statements contained in the following Section 2.8, with respect to himself, is true and correct as of the date hereof:

(a) Such Seller is acquiring the Replacement Restricted Stock, Restricted Stock Units (as defined in Section 5.4) and any Buyer common stock that may be issued with respect to such Restricted Stock Units (collectively, the "**Restricted Securities**") for his own account for investment, with no intention of distributing or selling any portion thereof within the meaning of applicable securities laws and shall not transfer the Restricted Securities in violation of the Securities Act of 1933, as amended (the "**Securities Act**"), or the then applicable rules or regulations thereunder or any other applicable securities law.

(b) Such Seller is able to bear the economic risk of holding the Restricted Securities for an indefinite period, and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment in the Restricted Securities.

(c) Such Seller is aware that (i) the issuance of the Restricted Securities will not be registered under the Securities Act or any state securities laws, (ii) the Buyer is relying upon, among other things, his representations and warranties in this Section 2.7 in concluding that the issuance of the Restricted Securities does not require registration under the Securities Act or any state securities laws and (iii) his right to transfer the Restricted Securities is restricted by the Securities Act and similar state securities laws, the terms of this Agreement and of the Buyer's form of restricted stock unit award agreement.

(d) Such Seller is an "accredited investor" within the meaning of Regulation D under the Securities Act.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES CONCERNING THE COMPANY**

The Company and the Management Sellers jointly and severally represent and warrant to the Buyer that each of the statements contained in this Article 3 when qualified by the applicable Disclosure Schedule is true and correct as of the date hereof. References to the Company in this Article 3 shall be construed as a reference to Machinio Corp. and its subsidiary Machinio GmbH, where applicable.

### **3.1 Organization, Power and Standing.**

(a) Machinio Corp. is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Machinio Corp. has full corporate power and authority to own, lease and operate its properties and to carry on its business as such business is conducted on the date hereof. The copies of the certificate of incorporation and bylaws of Machinio Corp., each as amended through the date hereof (the "**Delaware Company Charter Documents**"), that have been made available to the Buyer by the Company are complete and correct copies thereof.

(b) Machinio GmbH is a private limited company duly organized, validly

existing and in good standing under the laws of the Federal Republic of Germany. Machinio GmbH has full corporate power and authority to own, lease and operate its properties and to carry on its business as such business is conducted on the date hereof. The copies of the articles of incorporation and by-laws of Machinio GmbH, each as amended through the date hereof (together with the Delaware Company Charter Documents, the “**Company Charter Documents**”), that have been made available to the Buyer by the Company are complete and correct copies thereof.

1. **Power and Authority.** The Company has the corporate power and authority and has taken all required corporate action on its part necessary to permit it to execute and deliver and to carry out the terms of this Agreement and the other agreements, instruments and documents to be executed and delivered by the Company as contemplated hereby (collectively, the “**Transaction Documents**”). The Company has duly and validly authorized the execution, delivery and performance of this Agreement and the other Transaction Documents to which the Company is a party.

2. **Validity and Enforceability.** Assuming the valid execution and delivery by the other parties hereto and thereto, this Agreement is, and each of the Transaction Documents will be when executed and delivered by the Company, the valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms, subject, however, to applicable bankruptcy, insolvency and other laws affecting the rights and remedies of creditors and to general equitable principles.

3. **Subsidiaries.** **Schedule 3.4** of the Disclosure Schedule sets forth all corporations, partnerships, limited liability companies, trusts, joint ventures, associations or other entities in which the Company directly or indirectly owns or controls any interest and the respective percentages of each such interest (the “**Subsidiaries**”). All such interests are outstanding and are duly authorized, validly issued, fully paid, and non-assessable. The Company is the registered and beneficial owner of such interests and the Company’s ownerships in such interests are free of any Liens, preemptive rights, rights of first refusal, repurchase rights, redemption rights or “put” or “call” rights created by statute, the certificate of incorporation or bylaws of the entities in which such interests exist or by any contract to which the Company is a party or by which the Company is bound. Each such interest represents the percentage of total issued and outstanding equity interest of the entities in which such interests are held as set forth in **Schedule 3.4** of the Disclosure Schedule. The Company has obtained all necessary approvals and consents necessary to acquire and own such interests and none of such approvals or consents will be withdrawn, canceled, restrained or otherwise materially and adversely impacted by the transactions to be consummated under this Agreement.

4. **Foreign Qualifications.** **Schedule 3.5** of the Disclosure Schedule sets forth a complete and accurate list of all jurisdictions in which the Company is qualified to do business as a foreign entity. There are no other jurisdictions in which the Company is required to qualify to do business as a foreign entity.

5. **Capitalization.** The authorized capital stock of the Company consists of: 12,500,000 shares of Common Stock, of which 5,114,464 are issued and outstanding, and 5,943,184 shares of Preferred Stock, of which 5,814,285 are issued and outstanding. **Schedule 3.6** of the Disclosure Schedule sets forth a complete and accurate list of all outstanding shares of capital stock of the Company, the record holders thereof and the number and type of shares held by each record holder. Such shares are duly authorized, validly issued, fully paid and nonassessable, and have not been issued in violation of any purchase option, call option, right of first refusal, preemptive right, subscription right or other rights held by a third party, and have been issued in compliance with applicable law. Other than as set forth on **Schedule 3.6** of the Disclosure Schedule, there are no outstanding options, warrants, convertible or exchangeable securities or other rights that would obligate the Company to issue shares of its capital stock or other equity securities. **Schedule 3.6** sets forth a true and complete list of all holders of such rights, indicating, as applicable, the type of right,

the number of shares subject thereto, the name of the plan under which such right was granted (if any), the date of grant, exercise or purchase price, vesting schedule, payment schedule and expiration thereof. Other than as set forth on **Schedule 3.6** of the Disclosure Schedule, there are no agreements, written or oral, to which the Company is a party relating to the acquisition, disposition, voting or registration under applicable securities laws of any equity security of the Company. There are no outstanding or authorized stock appreciation, phantom stock or other similar rights with respect to the Company.

6. **Financial Statements.**

(a) The Company has delivered to the Buyer (a) audited balance sheets, statements of operations and cash flows for the calendar years of the Company ended December 31, 2015, 2016 and 2017, and (b) an unaudited balance sheet of the Company (the “**Balance Sheet**”) as of May 31, 2018 (the “**Balance Sheet Date**”) and an unaudited statement of income for the five-month period then ended (collectively, (a) and (b) being the “**Financial Statements**”). The Financial Statements and the notes thereto, if any, are correct and accurate in all material respects, and fairly present, in all material respects, the financial condition of the Company for the periods then ended, and were prepared in accordance with the books and records of the Company in conformity with GAAP as consistently applied by the Company with the same accounting methods, policies, practices and procedures used for Buyer and its subsidiaries and affiliates (except as set forth on **Schedule 3.7** of the Disclosure Schedule or as otherwise stated therein or in the case of unaudited financial statements for the omission of footnotes and subject to year-end adjustments).

(b) The Company has no liabilities that are not reflected on the Balance Sheet, including the notes thereto, other than liabilities arising in the ordinary course of business or liabilities incurred in connection with the transactions contemplated hereby.

(c) All material accounts receivable of the Company reflected in the Balance Sheet or existing as of the Closing Date are bona fide accounts receivables and are or will be valid and enforceable against the account debtor, subject to the allowance for doubtful accounts set forth on the Balance Sheet or in the books and records of the Company, as the case may be. The Company and the Sellers have delivered to the Buyer as **Schedule 3.7(c)** of the Disclosure Schedule a true and correct list of all material accounts receivable which have been deemed uncollectable by the Company as of the date hereof. Without limitation of the foregoing representations in this Section 3.7(c), neither the Company nor the Management Sellers is representing, warranting or guaranteeing the collectability of any accounts receivable.

(d) **Schedule 3.7(d)** of the Disclosure Schedule sets all of the Company’s outstanding indebtedness on the date hereof that would constitute Closing Indebtedness.

1. **Absence of Certain Changes.** Since the Balance Sheet Date, except as set forth on **Schedule 3.8** of the Disclosure Schedule and except for transactions contemplated by this Agreement, (a) the Company has conducted its business in all material respects in the ordinary course, (b) no Lien has been placed upon any of the Company’s assets, other than Permitted Liens, (c) the Company has not acquired or disposed of any material assets, except in the ordinary course of business, (d) there has been no material damage, destruction or casualty loss (other than those covered by insurance) with respect to any of the assets or properties of the Company, with reasonable wear and tear excepted, (e) the Company has not cancelled, compromised or waived any material right or claim outside of the ordinary course of business, (f) the Company has not accelerated, terminated, modified or cancelled any material agreement, contract, lease or license related to the Company’s business and (g) to the Company’s knowledge, there has been no event or circumstance relating specifically to the Company that has caused a Company Material Adverse Effect. As used herein, the term “**Company Material Adverse Effect**” shall mean a material adverse effect on the assets, liabilities, properties or financial

condition of the Company, taken as a whole; provided, however, that in no event shall any of the following be taken into account in the determination of whether a Company Material Adverse Effect has occurred: (a) any change in any Legal Requirement or GAAP; (b) any change resulting from conditions affecting any of the industries in which the Company operates or from changes in general business, financial, political, capital market or economic conditions (including any change resulting from any hostilities, war or military or terrorist attack), so long as the Company is not disproportionately affected thereby; (c) any change resulting from national or international political or social conditions, including the engagement by the United States in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, equipment or personnel of the United States; (d) any change resulting from financial, banking, or securities markets (including (w) any disruption of any of the foregoing markets, (x) any change in currency exchange rates, (y) any decline or rise in the price of any security, commodity, contract or index and (z) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the transactions contemplated hereby); (e) any change resulting from the taking of any action contemplated by this Agreement or the other agreements contemplated hereby or the announcement of this Agreement, the other agreements contemplated hereby or the transactions contemplated hereby or thereby; (f) any change resulting from the announcement or pendency of the transactions contemplated by this Agreement or attributable to the fact that the Buyer or any of its Affiliates are the prospective owners of the Company; (g) any change resulting from any adverse change in or effect on the business of the Company that is caused by any delay in consummating the Closing as a result of any violation or breach by Buyer of any covenant, representation or warranty contained in this Agreement which has prevented the satisfaction of any condition to the obligations of the Company at the Closing; and (h) any change resulting from any “act of God”, including weather, natural disasters and earthquakes; provided, however, that any event, occurrence, fact, condition or change referred to in clauses (a) or (b) immediately above shall be taken into account in determining whether a Company Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a materially adverse and disproportionate effect on the Company compared to other participants in the industries in which the Company conducts its businesses.

2. **Taxes.**

(a) The representations and warranties set forth in this Section 3.9 are subject in all respects to the qualifications and disclosures set forth on **Schedule 3.9** of the Disclosure Schedule.

(b) For purposes of this Agreement, the following definitions shall apply:

(i) “**Code**” means the Internal Revenue Code of 1986, as amended.

(ii) “**Post-Closing Tax Period**” means all taxable periods beginning on or after the day after the Closing Date and the portion of a Straddle Period beginning on the day after the Closing Date.

(iii) “**Pre-Closing Tax Period**” means all taxable periods ending on or before the Closing Date and the portion of a Straddle Period ending on and including the Closing Date.

(iv) “**Pre-Closing Taxes**” means any and all Taxes of the Company that are attributable to a Pre-Closing Tax Period.

(v) “**Straddle Period**” means a Tax period that includes, but does not

end on, the Closing Date.

(vi) “**Tax**” or “**Taxes**” means (A) any and all federal, state, provincial, local, foreign and other taxes, levies, fees, imposts, duties and similar governmental charges (including any interest, fines, assessments, penalties or additions to tax imposed in connection therewith or with respect thereto) including, without limitation (I) taxes imposed on, or measured by, income, franchise, profits or gross receipts, and (II) ad valorem, value added, capital gains, sales, goods and services, use, real or personal property, capital stock, license, branch, payroll, estimated withholding, employment, social security (or similar), unemployment, compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes, and customs duties, (B) liability for the payment of any amounts of the type described in clause (A) arising as a result of being (or ceasing to be) a member of any affiliated, consolidated, unitary or similar group or (C) liability for the payment of any amounts of the type described in clause (A) or (B) as a result of any express or implied obligation to indemnify or otherwise assume or succeed to the liability of any other Person. As used herein, “**Person**” means any individual, corporation, partnership, limited liability company, joint venture, governmental agency or instrumentality or any other entity.

(vii) “**Tax Returns**” means all reports, estimates, declarations of estimated Tax, information statements and returns relating to Taxes and any schedules attached to or amendments of any of the foregoing.

(viii) “**Treasury Regulations**” means the income tax regulations promulgated by the United States Department of Treasury pursuant to the Code.

(c) Filing of Tax Returns and Payment of Taxes.

(i) The Company has filed when due all Tax Returns required by applicable law to be filed with respect to the Company and all Taxes shown to be due on such Tax Returns have been paid (except for Taxes which were contested in good faith);

(ii) All such filed Tax Returns were true, correct and complete as of the time of such filing;

(iii) All Taxes relating to periods ending on or before the Closing Date owed by the Company (whether or not shown on any Tax Return) at any time prior to the Closing Date, if required to have been paid, have been timely paid to the proper governmental authority (except for Taxes which are being contested in good faith shown on **Schedule 3.9** of the Disclosure Schedule);

(iv) Any liability of the Company for Taxes not yet due and payable, or which are being contested in good faith, has been adequately provided for on the Financial Statements of the Company, and on **Schedule 3.9** of the Disclosure Schedule. The Company has properly accrued and reflected on the Financial Statements and will from the date of the latest financial statements through the Closing Date (as well as including on the Closing Working Capital calculation) properly accrue, all liabilities for Taxes and assessments, all such accruals being in the aggregate sufficient for payment of all such Taxes and assessments;

(v) The Company has not filed a Form 2848 (Power of Attorney) with the Internal Revenue Service in connection with any of the Pre-Closing Tax Years, and has not executed any waivers to extend any applicable statute of limitations in respect of any Pre-Closing Tax Period; and



(vi) **Schedule 3.9** of the Disclosure Schedule lists all federal, state and local income Tax Returns filed with respect to the Company for taxable periods ended on or after January 1, 2013, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of an audit, to the Company's knowledge.

(d) Except as otherwise disclosed in **Schedule 3.9(d)** of the Disclosure Schedule, the Company will not be required to include any item of income in taxable income for any Post-Closing Tax Period as the result of any (i) change in method of accounting for a PreClosing Tax Period, (ii) installment sale made on or prior to the Closing Date or (iii) prepaid amount received on or before the Closing Date.

(e) To the Company's knowledge, there is no action, suit, proceeding, investigation, audit or claim now pending against, or with respect to, the Company in respect of any Tax or assessment, nor is any claim for additional Tax or assessment asserted in writing by any Tax authority.

(f) The Company has made or caused to be made all withholdings of Taxes required to be made and has complied with all applicable Tax information reporting requirements, and such withholdings have either been timely paid to the appropriate governmental authority or set aside in appropriate accounts for such purpose if such Taxes have not been required to have been paid over to a governmental authority.

(g) There are no Tax Liens pending or, to the knowledge of the Company, threatened against the Company or its assets or property, other than the Permitted Liens.

(h) The Company is not now, nor has previously been, a member of an affiliated group filing a consolidated, combined, unitary or similar Tax Return. The Company has no liability for Taxes of any Person (other than itself) under Treasury Regulations Section 1.1502-6 (or any similar provision of federal, state, local or foreign law), as a transferee or successor, by contract, or otherwise.

(i) No material claim has ever been made by a taxing authority in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction.

(j) To the Company's knowledge, the Company is not now, nor has it previously been, a party to a "reportable transaction" within the meaning of Section 1.6011-4(b) of the Treasury Regulations.

(k) No withholding is required under Section 1445 of the Code in connection with the consummation of the transactions contemplated by this Agreement.

(l) There is no currently effective election to be an S corporation under Section 1362(a) of the Code with respect to the Company. Within the last five (5) years, the Company has not been a "distributing corporation" or a "controlled corporation" within the meaning of Section 355 of the Code.

(m) The Company will not be required as a result of any "closing agreement," as described in Section 7121 of the Code, to include any item of income or exclude any item of deduction from any Post-Closing Tax Period.

(n) The Company has not made any payments, nor will it become obligated

under any Benefit Plan or any contract entered into on or before the Closing Date, to make any payments that could be non-deductible under Section 280G of the Code or that could give rise to any obligation to indemnify any Person for any Tax payable pursuant to Section 4999 of the Code.

(o) The Company is not a partner, member, owner or beneficiary of any entity treated as a partnership or a trust for tax purposes.

(p) The Company has not taken any action that is not in accordance with past practice that could defer a liability for Taxes of the Company from any Pre-Closing Tax Period to any Post-Closing Tax Period. The Company has at all times used the cash method of accounting for income Tax purposes.

1. **Personal Property.** The Company has valid title to or a valid leasehold, license or other similar interest in its material tangible personal property, free and clear of all Liens, except for Permitted Liens. The equipment and other tangible operating assets of the Company, taken as a whole, are in good condition and repair sufficient to conduct the business of the Company as the same is conducted on the date hereof, normal wear and tear excepted.

As used in this Agreement, “**Permitted Liens**” means (a) materialmen’s, mechanics’, carriers’, workmen’s, warehousemen’s, repairmen’s, landlords’ and other like Liens arising in the ordinary course of business, or deposits to obtain the release of such Liens, (b) Liens for Taxes not yet due and payable, or that are being contested in good faith, (c) purchase money Liens incurred in the ordinary course of business, (d) the Liens listed on **Schedule 3.10** of the Disclosure Schedule, (e) Liens created as a result of any action taken by or through the Buyer or any of its Affiliates, (f) Liens securing the Closing Indebtedness, which will be removed at Closing, (g) Liens of lessors, lessees, sublessors, sublessees, licensors or licensees arising under lease arrangements or license arrangements, (h) zoning, building codes, and other land use laws regulating the use or occupancy of any real property leased by the Company or the activities conducted thereon that are imposed by any governmental entity having jurisdiction over such leased real property, and (i) any restrictions under applicable securities laws.

2. **Real Property.**

(a) The Company does not own any real property.

(b) **Schedule 3.11** of the Disclosure Schedule describes each interest in real

property leased by the Company, including the lessor of such leased property, and identifies each lease or any other arrangement under which such property is leased. The Company enjoys peaceful and quiet possession of its leased premises and has not received any written notice from any landlord asserting the existence of a material default under any such lease or been informed in writing that the lessor under any such lease has taken action or, to the knowledge of the Company, threatened to terminate the lease before the expiration date specified in the lease. Except as set forth on **Schedule 3.11** of the Disclosure Schedule, each lease of real property is valid and binding against the Company and, to the knowledge of the Company, against the counterparty thereto, and the Company has not subleased, licensed or otherwise granted to any Person or entity the right to use or occupy any of the leased real property or any portion thereof. Except as shown on **Schedule 3.11** of the Disclosure Schedule, the transactions contemplated by this Agreement will not be the basis for any lessor to terminate its lease prior to the expiration date of the lease.

**3.12 Intellectual Property.**

(a) As used herein “**Intellectual Property**” means all (i) patents, provisional

patent applications, patent applications, continuations, reissues, reexaminations, rights of priority, extensions and invention disclosures, (ii) trademarks and service marks (in each case, whether registered or unregistered), (iii) trade names and corporate names (in each case, whether registered or unregistered) and registrations and applications for registration thereof together, to the extent applicable, with all of the goodwill associated therewith, (iv) mask works and copyrights (registered or unregistered) and copyrightable works and registrations and applications for registration thereof, (v) computer software, data, data bases and documentation thereof, (vi) trade dress, trade secrets and other confidential information (including, without limitation, ideas, formulae, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, financial and marketing plans and customer and supplier lists and information) and (vii) Uniform Resource Locators (a.k.a. “URLs” or “domain names”). As used herein, “**Company Intellectual Property**” means Intellectual Property owned by the Company.

(b) **Schedule 3.12** of the Disclosure Schedule contains a list of all Company Intellectual Property included in clauses (i), (ii), (iii), (iv) and (vii) of the definition of Intellectual Property which the Company owns and has registered with a governmental or other appropriate authority, or with respect to which the Company has filed an application for such a registration, except for any Company Intellectual Property that has been abandoned by the Company. The Company Intellectual Property is subsisting and valid. The Company has paid all necessary registration, maintenance and renewal fees for the purpose of maintaining such Company Intellectual Property.

(c) **Schedule 3.12** of the Disclosure Schedule also contains a list of all material exclusive licenses granted by the Company to any third party with respect to any owned Company Intellectual Property and all material exclusive licenses granted by any third party to the Company with respect to any Company Intellectual Property, excluding “off-the-shelf” or “shrink wrap” products licensed to the Company and excluding products licensed by the Company in the ordinary course of business (collectively, the “**IP Licenses**”). The Company is in material compliance with the terms of such exclusive licenses.

(d) **Schedule 3.12** of the Disclosure Schedule contains a description of all licenses granted by the Company to any third party (collectively, the “**Out Licenses**”) with respect to any Company Intellectual Property that is material to the Company’s business as currently conducted. The Company is in material compliance with the terms of such Out Licenses.

(e) **Schedule 3.12** of the Disclosure Schedule contains a description of all licenses granted by any third party (collectively, the “**In Licenses**”) to the Company with respect to any Intellectual Property that is material to the Company’s business as currently conducted, excluding licenses for “off-the-shelf” software or “shrink wrap” products. The Company is in material compliance with the terms of such In Licenses.

(f) Except as set forth on **Schedule 3.12** of the Disclosure Schedule, (i) the Company is not violating any Intellectual Property of any other Person and (ii) to the knowledge of the Company, no third party is infringing on any Company Intellectual Property owned by the Company.

(g) The Company has taken reasonable steps to protect its rights in, and (to the extent confidential) the confidentiality of, the material Company Intellectual Property and any material Intellectual Property provided by any other Person to the Company.

(h) The Company has taken all reasonable steps to secure ownership of all Intellectual Property created by employees, independent contractors and other third parties providing

services to the Company, to the extent such Intellectual Property is material to the Company's business, including transferring Intellectual Property and work products from them to the Company and entering into appropriate and enforceable agreements to transfer the same to the Company.

(i) The Company is in material compliance with all data privacy and data security laws in the jurisdictions in which it operates or has customers.

1. **Material Contracts.** Set forth on **Schedule 3.13** of the Disclosure Schedule is a list of all Material Contracts of the Company, showing the parties thereto. Each Material Contract is in full force and effect and the Company, and, to the knowledge of the Company, each other party thereto has performed all material obligations required to be performed by them thereunder. The Company is not in default or breach in any material respect under any material provision of any Material Contract. Except as set forth in **Schedule 3.13**, to the knowledge of the Company, no third party is in default in any material respect under any material provision of any Material Contract. To the Company's knowledge, the Company is not in receipt of any written claim of default under any such Material Contract; and the Company has no current expectation or intention of not performing any obligation pursuant to any Material Contract in the ordinary course of business consistent with past practice.

As used herein, the term "**Material Contract**" means (i) any written employment agreement other than agreements terminable at will and without an obligation to pay severance or other termination pay; (ii) any consulting agreement or service agreement (other than supplier or customer agreements) which has a duration of more than one (1) year after the Closing Date or which has annual consideration in excess of \$50,000.00 or any service agreement which is an agreement to hire temporary workers; (iii) other than written agreements with professional advisors, any agreement of agency, representation, distribution, or franchise where annual consideration has been or is likely to be in excess of \$50,000.00; (iv) any agreement with a supplier or customer of the Company with annual consideration in excess of \$50,000.00 (other than purchase orders and customer agreements in the nature thereof in the ordinary course of business and other than those contracts or agreements that will be terminated at or prior to the Closing or are terminable by notice of not more than sixty (60) calendar days without material liability to the Company); (v) any agreement relating to the Closing Indebtedness or obligations for the reimbursement of any obligor on any letter of credit, banker's acceptance, guarantees or similar credit transaction; (vi) any agreement pursuant to which the Company is the lessee or sublessee of, or holds or operates, any personal property owned or leased by any other person or entity with annual consideration in excess of \$50,000.00; (vii) any arrangement or other agreement which involves a sharing of profits or any joint venture, partnership or similar agreement or arrangement; and (viii) any arrangement or other agreement providing for the payment of any cash or other benefits to an employee upon the sale or change of control of the Company or the sale of a substantial portion of its assets, including any sale bonus; (ix) any agreement prohibiting the Company from freely engaging in any business or competing anywhere in the world; and (x) all other written agreements where annual consideration has been or is likely to be in excess of \$50,000.00 (other than those described in Section (i)-(x)).

2. **Litigation.** Except as disclosed on **Schedule 3.14** of the Disclosure Schedule, there is no material action, arbitration, litigation, proceeding or governmental investigation pending or, to the knowledge of the Company, threatened against the Company.

3. **No Conflict; Required Consents and Approvals.** Except as set forth on **Schedule 3.15** of the Disclosure Schedule, the Company's execution, delivery and performance of this Agreement and the other agreements, instruments and documents of the Company contemplated hereby will not result in any material violation of, be in material conflict with or constitute a material default under the Company Charter Documents, any Material Contract, any Authorization or any Legal Requirement. Except as set forth on **Schedule 3.15** of the Disclosure Schedule, no material consent, order, approval, authorization, declaration or filing with or from any governmental authority

or any party to a Material Contract is required on the part of the Company for or in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby by the Company.

4. **Licenses and Permits. Schedule 3.16** of the Disclosure Schedule sets forth a list of all licenses, permits and authorizations (including expiration dates) of governmental authorities held by the Company that are material to the business of the Company as it is currently conducted (collectively, the “**Authorizations**”). The Authorizations are in full force and effect. The Company is in material compliance with the Authorizations. To the knowledge of the Company, no governmental authority has threatened the suspension or cancellation of any Authorization, except where such threatened suspension or cancellation relates to such items of noncompliance that the Company had previously remedied or will remedy within the applicable cure periods. To the knowledge of the Company, the Company is not aware of any fact or occurrence that would result in the Authorizations not being renewed in the normal course. The Company has provided access to Buyer to complete and correct copies of all material permits, licenses and authorizations.

5. **Compliance With Laws.** Except as set forth on **Schedule 3.17** of the Disclosure Schedule or in Section 3.12, the Company is in material compliance with all Legal Requirements (except as to Taxes, as to which Section 3.9 only applies, to Benefit Plans, as to which Section 3.19 only applies, and to Environmental Laws, as to which Section 3.22 only applies), including, but not limited to, all Legal Requirements relating to cyber-security, privacy and data protection. As used in this Agreement, the term “**Legal Requirements**” means, with respect to any Person, all foreign, federal, state and local statutes, laws, ordinances, judgments, decrees and orders and all governmental rules and regulations applicable to such Person.

6. **Employees and Compensation. Schedule 3.18** of the Disclosure Schedule sets forth a true and correct list of the name and current annual salary of each current employee of the Company and states whether such employee is an employee of Machinio Corp. or Machinio GmbH. The Company is not a party to a collective bargaining agreement or other contract with any labor organization or other representative of any Company employees, nor is any such agreement presently being negotiated by the Company. No labor union or representative thereof claims to be or, to the Company’s knowledge, is currently seeking or has sought, in the past five years, to represent such employees. To the Company’s knowledge, no employee identified on **Schedule 3.18** of the Disclosure Schedule has any present intention to terminate his or her employment with the Company within the next 12 months or is bound by any confidentiality agreement, non-competition agreement or other contract that may reasonably be expected to have a material adverse effect on such employee’s participation in the Company’s business. Except as disclosed on **Schedule 3.18**, during the ten (10) year period preceding the date of this Agreement, the Company has complied in all material respects with all Legal Requirements relating to employment and employment practices, employee record-keeping, terms and condition of employment, employee leave (including paid sick time), employee accommodations, background checks, drug and/or alcohol testing, workers’ compensation, unemployment compensation, employee garnishments, whistleblower requirements, employee hiring and termination, paid time off, non-discrimination, non-retaliation, payment of employment-related taxes, compliance with the Fair Labor Standards Act, employee and independent contractor classification, wages and hours, overtime, meal and rest breaks, Worker Adjustment Retraining Notification Act, Occupational Safety and Health Act and any state and local equivalents and similar matters. There are no pending or, to the Company’s knowledge, threatened employment-related claims between the Company and any of its employees or former employees and there have been no such claims in the past three (3) years. As of Closing, all present and former employees and contractors of the Company will have been paid all wages, bonuses and other compensation owed to them by the Company, other than payments that are, consistent with past practice, not yet payable (such as wages for the most recent pay period or bonuses not yet paid). To the Company’s knowledge, the

Company (i) does not employ any individual who is not legally authorized to work in the United States or Germany, as applicable, and (ii) has complied in all material respects with all applicable immigration laws.

7. **Benefit Plans.**

(a) **Schedule 3.19** of the Disclosure Schedule sets forth all employee benefit plans and arrangements (including, but not limited to, plans described in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”)) maintained by the Company, currently or in the last five (5) years, for the general benefit of their employees, or with respect to which the Company has any direct or contingent liability (including, but not limited to, liabilities arising from affiliation under Section 414(b), (c), (m) or (o) of the Code, or Section 4001 of ERISA) (the “**Benefit Plans**”). The Company has no liability with respect to any “defined benefit plans” as defined in ERISA.

(b) With respect to each Benefit Plan, the Company has made available to the Buyer true and complete copies of: (i) any and all plan documents and agreements; (ii) any and all outstanding summary plan descriptions and material modifications thereto, if applicable; (iii) funding and investment management agreements; (iv) insurance policies; (v) employee booklets; (vi) the most recent financial statements and asset statements; and (vii) all material correspondence (including relevant reports filed with the Internal Revenue Service, the Department of Labor or any of their related entities by or on behalf of the Benefit Plan) with the Internal Revenue Service, the Department of Labor or any of their related entities that has been provided to the Company. No changes have occurred or are expected to occur which would materially affect the information contained in the reports to the Internal Revenue Service, the Department of Labor or any of their related entities. In the case of each unwritten Benefit Plan, the Company has delivered to the Buyer a written description which accurately describes all material provisions with respect to such Benefit Plan.

(c) With respect to each Benefit Plan, to date and through the Closing Date: (i) such Benefit Plan has been established, registered (where required), qualified (where required), maintained, administered, funded and invested in accordance with its terms and all Legal Requirements (including but not limited to ERISA, the Code, the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Health Insurance Portability and Accountability Act of 1996) in all material respects; (ii) no breach of fiduciary duty has occurred with respect to which the Company or any Benefit Plan would be liable in any material respect; (iii) no disputes (other than routine claims for benefits) are pending, commenced or, to the knowledge of the Company, threatened; and (iv) the Company has not taken any action that could reasonably be expected to subject the Company to any material Tax under Section 4975 of the Code.

(d) Each Benefit Plan that is intended to meet the requirements of a “qualified plan” within the meaning of Sections 401(a) and 501(a) of the Code has applied for and/or received a favorable determination letter from the Internal Revenue Service (or, if such Benefit Plan is a prototype or volume submitter plan document, such prototype or volume submitter plan document has received a favorable opinion letter from the Internal Revenue Service that the form meets the tax qualification requirements) to the effect that such Benefit Plan satisfies the requirements of Section 401(a) of the Code and that its related trust is exempt from taxation under Section 501(a) of the Code and there are no facts or circumstances that could reasonably be expected to cause the loss of such qualification or the imposition of material liability, penalty or tax under ERISA, the Code or other applicable laws.

(e) No Benefit Plan is subject to Title IV of ERISA or the minimum funding requirements of Section 412 of the Code.

(f) Except as set forth on **Schedule 3.19** of the Disclosure Schedule, neither the entering into of this Agreement nor the consummation of the transactions contemplated by this Agreement will, directly or in combination with any other event, (i) accelerate the time of payment or vesting under any

Benefit Plan, (ii) increase the amount of compensation or benefits due to any individual under any Benefit Plan, or (iii) restrict the right of the Company to amend or terminate any Benefit Plan. The Company has no obligation to gross up or indemnify any Person for any Tax incurred under Section 409A or 4999 of the Code.

(g) None of the Benefit Plans provides or promises post-employment or post-retirement benefits to or in respect of employees or any former employees.

(h) All Benefit Plans (if any) requiring funding on the part of the Company are fully funded and will be fully funded without any deficiency up to and including the Closing Date.

(i) All Company and employee payments, contributions or premiums ever required to be remitted, paid to or in respect of each Benefit Plan have been, and will continue to be, paid or remitted in a timely fashion in accordance with the terms of the Benefit Plans and applicable laws up to and including the Closing Date.

(j) All benefits accrued under any unfunded Benefit Plan will have been paid, accrued or otherwise adequately reserved as set forth on **Schedule 1.2** of the Disclosure Schedule.

(k) The Company has established the current level of reserves under each Benefit Plan consistent with past practice.

(l) The Company has not incurred any liability to the Internal Revenue Service, any multiemployer plan or otherwise with respect to any employee pension benefit plan that has not been satisfied in full, and no condition exists that presents a material risk to the Company of incurring such a liability. This includes but is not limited to any unfunded liabilities, or any other joint and several, potential, contingent or actual, or other similar liabilities, on account of or in connection with any of the Benefit Plans in which the Company is a participating employer.

(m) To the Company's knowledge, all employee data necessary to administer each Benefit Plan in accordance with its terms and conditions and all applicable Laws is in the possession of the Company and such data is complete, correct, and in a form which is sufficient for the proper administration of each Benefit Plan.

(n) There is no Benefit Plan, and the Company has never sponsored a Benefit Plan, that is a nonqualified deferred compensation plan that is subject to Section 409A of the Code.

(o) Neither the Company nor another "party in interest" or any "disqualified person" with respect to any Benefit Plan that is subject to ERISA or the Code has engaged in a "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Code or engaged in a similar transaction with respect to any such Benefit Plan that is reasonably expected to result in a material Tax.

(p) No reportable event, as defined in ERISA, has occurred in connection with the Benefit Plans.

1. **Insurance.** The Company is insured under the insurance policies listed on **Schedule 3.20** of the Disclosure Schedule. The Company is in compliance in all material respects with the terms and provisions of such insurance policies. Except as disclosed on **Schedule 3.20** of the Disclosure Schedule, as of the date hereof, there are no pending claims under any such insurance policy as to which the respective insurers have denied coverage. The Company has made available to Buyer true and complete copies of all such insurance policies. **Schedule 3.20** of the Disclosure Schedule also describes any self-insurance or co-insurance arrangements by or affecting the Company, including any reserves established under such insurance. Each Insurance Policy is in full force and

effect as of the date hereof. The Company is current in all premiums or other payments previously due under such insurance policies. Since the Balance Sheet Date, the Company has given timely notice to the insurer of all material claims that may be insured under such insurance policies.

2. **Brokers.** Except as set forth on **Schedule 3.21** of the Disclosure Schedule, the Company has not engaged any broker, finder or similar agent with respect to the transactions contemplated by this Agreement, and the Company is not under any obligation to pay any broker's fee, finder's fee or commission in connection with the consummation of the transactions contemplated by this Agreement as a result of any agreement of the Company.

3. **Compliance With Environmental Laws.** Each of the representations and warranties set forth in this Section 3.22 is subject in all respects to the further qualifications and disclosures set forth on **Schedule 3.22** of the Disclosure Schedule.

(a) For purposes of this Agreement, the following definitions shall apply:

(i) **"Environment"** shall mean soil, surface waters, groundwaters, land, surface or subsurface strata and indoor and outdoor ambient air.

(ii) **"Environmental Claim"** shall mean any litigation, proceeding, order, claim, demand, directive, summons, complaint, written notice, written notice of violation, written information demand, cause of action or citation, from any governmental authority or third party asserting rights or obligations relating to Environmental Laws or the discharge, release or disposal of Hazardous Substances into the Environment.

(iii) **"Environmental Laws"** shall mean all foreign, federal, state and local statutes, regulations, rules and ordinances relating to pollution or the protection of the Environment, management of Hazardous Substances or the discharge of Hazardous Substances into the Environment.

(iv) **"Hazardous Substances"** shall mean any substance that is a "hazardous substance," "hazardous waste," "toxic substance," "toxic waste," "pollutant," "contaminant" or words of similar import under any Environmental Law including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), and the Clean Air Act (42 U.S.C. §7401 et seq.), and including, without limitation, which contains polychlorinated biphenyl, asbestos or gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds.

(b) Except as set forth on **Schedule 3.22(b)** of the Disclosure Schedule, the Company and the business and operations of the Company during the past five years have been and are in material compliance with all applicable Environmental Laws.

(c) Except as set forth on **Schedule 3.22(c)** of the Disclosure Schedule, the Company has obtained all material permits, licenses and authorizations required under applicable Environmental Laws for its operations and business and the business and operations of the Company are and have been during the last three years in material compliance with the terms and conditions of such required permits, licenses and authorizations, to the extent required.

(d) There are no pending or, to the Company's knowledge, threatened material Environmental Claims against the Company,

(e) None of the following has existed currently exists at any property or facility currently owned or operated by the Company or has existed during the period the Company has currently owned or operated such property or facility: (i) underground storage tanks; (ii) friable asbestos-



containing materials; (iii) materials or equipment containing polychlorinated biphenyls; or (iv) landfills, surface impoundments or hazardous waste disposal areas.

(f) The Company has not either expressly or by operation of law, assumed or undertaken any liability, including without limitation any material obligation for corrective or remedial action, of any other Person related to any Environmental Laws.

(g) The Company has provided access to complete and correct copies of (i) all current and material permits, licenses and authorizations required under applicable Environmental Laws for the operation of the Company, (ii) all written reports, correspondence, assessments and investigations within its possession concerning disposals, spills, leaks, releases (including past disposal, spills, leaks or releases) and potential releases of Hazardous Substances into the Environment at the Company's places of business or, with respect to any Hazardous Substances generated by the Company, released at any off-site locations and (iii) all written reports, correspondence, assessments and investigations regarding any alleged violation of Environmental Law by the Company or its business or operations.

(h) The representations in this Section 3.22 are the exclusive representations in this Agreement regarding environmental matters and liabilities under Environmental Law, except for permits and licenses which are also covered by Section 3.16.

1. **Affiliate Transactions.** Except for employment relationships and the payment of compensation and benefits in the ordinary course of business or as disclosed on **Schedule 3.23** of the Disclosure Schedule, the Company is not a party to any contract or other arrangement with any stockholder, officer, director or Affiliate of the Company. As used herein, the term "**Affiliate**" shall have the meaning given to it under Rule 405 promulgated under the Securities Act.

2. **Customers and Suppliers.** Except as set forth on **Schedule 3.24** of the Disclosure Schedule, no Major Customer and/or Major Supplier has notified the Company in writing that it intends, and to the Company's knowledge no Major Customer and/or Major Supplier intends, to terminate or materially and adversely modify its relationship with the Company. Except as set forth on **Schedule 3.24** of the Disclosure Schedule, no Major Customer or Major Supplier of the Company has during the last twelve months (i) materially decreased or limited, or threatened, in writing, to materially decrease or limit, its purchase of the Company's products, or its supply of materials or services to the Company, as the case may be and/or (ii) provided written notice to the Company that it intends to materially breach, repudiate, terminate or otherwise fail to perform a material portion of any existing written contract or will not consider the Company for future work. **Schedule 3.24** of the Disclosure Schedule lists the ten largest customers of the Company by sales during the period from March 31, 2017 through March 31, 2018 (each a "**Major Customer**"). **Schedule 3.24** of the Disclosure Schedule also lists the ten largest suppliers of the Company by expenses of the Company for materials or services purchased during the period from March 31, 2017 through March 31, 2018 (each a "**Major Supplier**").

3. **Absence of Questionable Payments.**

(a) The Company has not engaged in any activity, practice or conduct which would constitute an offense under the US Foreign Corrupt Practices Act of 1977 or any other law, rule or regulation otherwise relating to bribery or corruption of any relevant jurisdiction where the Company conducts its business (collectively, "**Applicable Anti-Corruption Laws**").

(b) No Associated Person has engaged in any activity, practice or conduct

which would constitute a violation under Applicable Anti-Corruption Laws. As used herein, “**Associated Person**” means in relation to the Company, its officers, directors, employees and agents and of any Subsidiary of the Company.

(c) The Company has not received notice that it is or has been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body or any customer regarding any violation or alleged violation under the Applicable Anti-Corruption Laws.

1. **Bank Accounts.** The attached **Schedule 3.26** of the Disclosure Schedule lists all of the Company’s bank accounts (designating each authorized signatory). Machinio Corp. has filed all Reports of Foreign Bank and Financial Accounts (FBAR) with the US Department of Treasury and such reports are true and correct in all respects.

2. **Books and Records.** The minute books and stock record books of the Company, all of which have been made available to Buyer, have been maintained in accordance in all material respects with sound business practices. Upon the consummation of the Closing, all of those material books and records will be in the possession of the Company.

3. **Compliance with OFAC.** None of the Company or any director, officer, agent, employee or Affiliate of the Company is a Person that is, or is owned or controlled by a Person that is, currently the subject or target of any sanctions administered or enforced by the U.S. government (including, without limitation, the Office of Foreign Assets Control of the U.S. Treasury Department or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority (collectively, “**Sanctions**”), nor is the Company located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Cuba, Iran, North Korea, Sudan and Syria

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE BUYER**

The Buyer hereby represents and warrants to the Sellers and the Company that each of the statements contained in this Article 4 is true and correct as of the date hereof.

**4.1 Organization, Power and Standing.** The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite power and authority to own, lease and operate its properties and to carry on its business as such business is conducted on the date hereof.

**4.2 Power and Authority; No Conflict.** The Buyer has full power and authority and has taken all required action necessary to permit it to execute and deliver and to carry out the terms of this Agreement and all other agreements, instruments and documents to be executed and delivered by the Buyer as contemplated hereby and none of such actions will result in any violation of, be in conflict with or constitute a default under any charter, by-law, organizational document, Legal Requirement, contract, agreement or instrument to which the Buyer is a party or by which the Buyer or its assets are bound. The Buyer has duly and validly authorized the execution, delivery and performance of this Agreement and the other Transaction Documents to which the Buyer is a party.

**4.3 Consents and Approvals.** Except as set forth on **Schedule 3.15** of the Disclosure Schedule, no consent, order, approval, authorization, declaration or filing from or with any governmental authority or third party is required on the part of the Buyer for or in connection with the execution, delivery and performance of this Agreement or any other agreement, instrument or document contemplated hereby by the Buyer and the consummation by the Buyer of any of the transactions contemplated herein or therein.

**4.4 Validity and Enforceability.** Assuming the valid execution and delivery by the other parties hereto and thereto, this Agreement constitutes, and each other agreement, instrument and document of the Buyer contemplated hereby will be when executed and delivered by the Buyer, the valid and legally binding obligation of the Buyer, enforceable against it in accordance with their respective terms, subject, however, to applicable bankruptcy, insolvency and other laws affecting the rights and remedies of creditors and to general equitable principles.

**4.5 Brokers.** The Buyer has not engaged any broker, finder or similar agent with respect to the transactions contemplated by this Agreement, and the Buyer is not under any obligation to pay any broker's fee, finder's fee, commission or similar amount in connection with the consummation of the transactions contemplated by this Agreement.

## ARTICLE 5 COVENANTS

### 5.1 Tax Matters.

(a) **Tax Indemnification.** The Sellers shall indemnify the Company and the Buyer from and against any and all Losses attributable to (i) all Pre-Closing Taxes (or the nonpayment thereof), (ii) any and all Taxes of any Person (other than the Company) imposed on the Company as a transferee or successor, by contract or pursuant to any law, rule or regulation, which Taxes relate to an event or transaction occurring prior to the Closing (iii) Taxes arising from or attributable to any inaccuracy in or breach of any representation or warranty made in Section 3.9 hereof, and (iv) Taxes arising from or attributable to any breach of any Tax covenant under this Agreement. Notwithstanding the foregoing, neither Buyer nor the Company shall have any right to indemnification under this Agreement with respect to, or based on, Taxes to the extent such Taxes (i) are attributable to taxable periods (or portions thereof) beginning after the Closing Date, (ii) are due to the unavailability in any taxable period (or portion thereof) beginning after the Closing Date of any net operating losses, credits or other similar Tax attributes from a Pre-Closing Tax Period, (iii) result from transactions or actions taken by Buyer or any of its Affiliates after the Closing that are not contemplated by this Agreement or (iv) were already taken into account in the calculation of the Closing Working Capital or the Closing Purchase Price.

(b) After the Closing, all refunds or other amounts received or receivable by the Buyer, the Company or any Affiliate thereof in respect of Taxes of the Company for any PreClosing Tax Period shall be paid, net of any income tax effect to the Company related to the receipt thereof, to each applicable Seller promptly upon receipt, except to the extent such refunds were reflected on the statement of the Closing Working Capital and taken into account in the calculation of the Closing Purchase Price. Upon the Representative's request and at Seller's expense, Buyer shall file (or cause to be filed) all Tax Returns (including amended Tax Returns) or other documents claiming any refunds, including through the carryback of any net operating losses that are attributable to a Pre-Closing Tax Period, to which Seller is entitled pursuant to this Section 5.1(b). Any payments required to be made under this Section 5.1(b) shall be made in immediately available funds, to the Sellers based on each Seller's Pro Rata Share, within fifteen (15) calendar days of the receipt of the applicable refund. The Buyer shall not cause or permit the Company to amend, and the Company shall not amend, the Tax Returns of the Company in respect of any Pre-Closing Tax Period without the prior written consent of the Representative, on behalf of the Sellers (such consent not to be unreasonably withheld, delayed or conditioned). In the event that any net operating losses attributable to a Pre-Closing Tax Period were carried back based upon the Representative's request as provided herein, and any deductions relating to the carryback of such net operating losses and corresponding tax refunds are

reduced or denied by any taxing authority, Sellers shall indemnify and hold harmless Buyer for any Tax assessed or refund offset by such taxing authority by reason of such reduction or disallowance.

(c) **Tax Returns**

(i) Buyer shall prepare or cause to be prepared, at the Sellers' cost and expense, all federal, state, local and foreign income and franchise Tax Returns of the Company for the Pre-Closing Tax Period required to be filed by the Company, the due date of which (taking into account extensions) occurs after the Closing Date, and will make available to the Representative drafts of such returns for its review and approval not later than thirty-five (35) business days prior to filing (such approval not to be unreasonably withheld, delayed or conditioned). Any Tax Return filed pursuant to the preceding sentence shall to the extent that such Tax Return shows a net operating loss of the Company, such net operating loss shall be carried back to previous Tax periods of the Company to the maximum extent permitted by applicable Law. The Buyer shall prepare or cause to be prepared, and timely file, all other Tax Returns of the Company for any other Pre-Closing Tax Period, the due date of which (taking into account extension) occurs after the Closing Date and will make available to the Representative drafts of such returns for their review and approval, not later than thirty-five (35) business days prior to the due date for filing such Tax Return by Buyer. All such Tax Returns shall be prepared in a manner consistent with the positions taken, and with accounting methods used, on the Tax Returns filed by or with respect to the Company prior to the Closing Date, unless otherwise required by applicable tax law or as agreed to by the Representative, on behalf of the Sellers, and Buyer.

(ii) The Buyer shall be responsible for preparing and filing all other Tax Returns of the Company; provided however, that in the case of any such Tax Return with respect to a Pre-Closing Tax Period or Straddle Period, not later than thirty-five (35) business days prior to the due date for filing such Tax Return by Buyer, Buyer shall provide the Representative with a copy of the draft of such Tax Return for their review and approval, on behalf of the Sellers (such approval not to be unreasonably withheld, delayed or conditioned).

(iii) Without the prior written consent of Representative, on behalf of Sellers, Buyer shall not amend any Tax Returns or make or change any Tax elections or accounting methods, or agree to the extension or waiver of the statute of limitations period or take any other action that has the effect of extending the period of assessment or collection of any Taxes, in each case with respect to the Company, relating to any PreClosing Tax Period or Straddle Period. Upon determination by Buyer that such amendment or making or changing of any Tax elections or accounting methods is so required, Buyer shall promptly notify the Representative in writing of such determination. If the Representative disagrees with such determination, the Representative shall notify Buyer of such disagreement. If the parties are unable to resolve such disagreement within fifteen (15) business days of such notification, then such disagreement shall be resolved by submitting such disagreement for resolution to the Tax Accountant (as hereinafter defined) in accordance with the procedures set forth in the following paragraph.

(iv) In the event of any disagreement between Buyer and the Representative regarding any Tax Return furnished to the Representative for approval under this Section 5.1. that cannot be resolved by the fifteenth (15<sup>th</sup>) business day prior to the due date for such Tax Return (including any applicable extensions), such disagreement shall be resolved by an accounting firm mutually agreeable to Buyer and the Representative (the "**Tax Accountant**"), and any such determination by the Tax Accountant shall be final. If the parties are unable to agree upon the selection of a Tax Accountant, then they will request the American Arbitration Association to furnish a list of not less than three certified public accounting firms to act as the Tax Accountant. Selection of the Tax Accountant will be made by the

parties alternately striking any name from such list until only one name remains. The fees and expenses of the Tax Accountant shall be borne equally by Buyer on the one hand, and Sellers on the other. If the Tax Accountant does not resolve any differences between Buyer and Sellers with respect to such Tax Return at least five (5) business days prior to the due date therefor (including any applicable extensions), such Tax Return shall be filed as prepared by the party having the responsibility hereunder for filing such Tax Return and thereafter amended, if necessary, to reflect the Tax Accountant's resolution.

(v) For purposes of this Agreement, in the case of any Taxes that are payable for a Straddle Period, the portion of such Tax attributable to the Pre-Closing Tax Period shall (A) in the case of any Taxes other than Taxes based upon or related to income, sales, gross receipts, wages, capital expenditures or expenses, be deemed to be the amount of such Tax for the Straddle Period multiplied by a fraction the numerator of which is the days in the Pre-Closing Tax Period and the denominator of which is the number of days in the Straddle Period, and (B) in the case of any Tax based upon or related to income, sales, gross receipts, wages, capital expenditures or expenses, be deemed to be equal to the amount that would be payable if the Pre-Closing Tax Period ended on the Closing Date.

(d) **Tax Audits.** Buyer shall notify Representative in writing within ten (10) calendar days after receipt by Buyer of written notice of any pending federal, state, local or foreign Tax audit or examination or notice of deficiency or other adjustment, assessment or redetermination relating to Taxes that may give rise to a claim for indemnification against the Sellers pursuant to Section 5.1(a) (each, a "**Tax Matter**"), describing the claim in reasonable detail, the amount thereof and the basis therefor; provided, however that Buyer's failure to so notify Representative shall not limit Buyer's rights under this Article except to the extent Sellers are materially prejudiced by such failure. Representative shall promptly notify Buyer in writing upon receipt by Representative of notice of any Tax audits, examinations or assessments that could give rise to Taxes of or with respect to the Company.

(e) Representative shall have the right to represent the Company's interest in any Tax Matter for any Pre-Closing Tax Period and to employ counsel of its choice at the expense of the Sellers; provided, however, that if such Tax Matter could reasonably be expected to increase the Tax liability of Buyer, the Company or any of Buyer's Affiliates in any Post-Closing Tax Period, Representative shall (i) notify Buyer of significant developments with respect to any such Tax Matter and keep Buyer reasonably informed and consult with Buyer as to the resolution of any issue that would materially affect Buyer or any such Affiliate, (ii) give to Buyer a copy of any Tax adjustment proposed in writing with respect to such Tax Matter and copies of any other written correspondence with the relevant taxing authority relating to such Tax Matter, (iii) not settle or compromise any issue in a manner that would reasonably be expected to increase Taxes payable by the Company or by Buyer or any of its Affiliates in any Post-Closing Tax Period without the consent of Buyer (which shall not be unreasonably withheld, delayed or conditioned) and (iv) otherwise permit Buyer to participate in all aspects of such Tax Matter, at Buyer's own expense.

(f) In the case of a Straddle Period or Post-Closing Tax Period, Buyer shall have the sole right to control all Tax audits of the Company; provided, however, that if such Tax audit may give rise to a claim for indemnification against the Sellers pursuant to Section 5.1(a), Buyer shall (i) notify Representative in writing of significant developments with respect to any Tax audits, examinations or proceedings that could give rise to a Loss for which the Sellers are responsible under Section 5.1(a) and Article 7, and keep Representative reasonably informed and consult with Representative as to the resolution of any issue that would materially affect Representative and/or Sellers, (ii) give to Representative a copy of any Tax adjustment proposed in writing with respect to such Tax audit, examination or proceeding and copies of any other written correspondence with the relevant taxing authority relating to such Tax audit, examination

or proceeding, (iii) not settle or compromise any issue in a manner that would reasonably be expected to increase Taxes indemnifiable by the Sellers under Section 5.1(a) and Article 7, without the consent of Representative, which consent shall not be unreasonably withheld, conditioned or delayed and (iv) otherwise permit Representative to participate in all aspects of such Tax audit, examination or proceeding, at the Seller's expense.

(g) Buyer shall have the sole right to control all Tax audits of the Company not described in subsection (e) or (f) of this Section 5.1, to the extent they relate to a Post-Closing Tax Period. Representative, on behalf of the Sellers, shall have the sole right to control all Tax audits of the Company not described in subsection (e) or (f) of this Section 5.1, to the extent they relate to a Pre-Closing Tax Period.

(h) **Cooperation in Tax Matters.** Each party to this Agreement shall provide the other parties with such assistance as may be reasonably requested by such party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administration contest or proceedings relating to liability for Taxes, and shall provide the other parties with any available records or information that may be relevant to such Tax Return, audit, examination, contest, proceedings or determination. Such assistance shall include making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and shall include providing copies of any relevant Tax Return and supporting work schedules. The party requesting assistance hereunder shall reimburse the other parties for reasonable out-of-pocket expenses incurred in providing such assistance (in the case of the Representative, on behalf of the Sellers).

(i) **Certain Taxes and Fees.** All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement shall be borne by Buyer and Sellers equally and shall be paid when due, and the Sellers will, at their own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges, and, if required by applicable law, Buyer will join in any such Tax Returns and other documentation.

1. **Books and Records.** From and after the Closing, the Buyer will cause the Company to maintain a reasonable records retention policy. After the Closing, the Sellers and their accountants, lawyers and other representatives shall be entitled at all reasonable times to have access to and to make copies of the books and records and other information of the Company for the period prior to the Closing for any purpose relating to the Sellers' ownership of the Company prior to the Closing including, without limitation, the preparation of Tax Returns. In the event of any litigation or threatened litigation between the parties relating to this Agreement or the transactions contemplated hereby, the covenants contained in this Section 5.2 shall not be considered a waiver by any party of any right to assert the attorney-client privilege.

2. **Noncompete.** Following the Closing Date, for a period of five (5) years (the "**Restricted Period**"), each of the Management Sellers covenants that it will not and will cause its Affiliates to not, directly or indirectly acquire, own, participate or engage in, or be employed by, an entity (other than the Company) anywhere in the world that is engaging in the online marketing, auctioning, valuation, asset management, advertising, or dealer management services in the following category of assets: vehicles, trucks, transportation and rolling stock, equipment (including, without limitation forestry, wood-working, recycling and disposal, semiconducting, test and laboratory, biotech, pharmaceutical, energy, food processing, aerospace and defense, agricultural, construction, manufacturing, fast-moving consumer goods applicable to manufacturing equipment, and printing and processing equipment), machinery, reverse supply chain retail inventory, real estate and machine

tools (the “**Restricted Activities**”); provided, however, that, for purposes of this Section 5.3, ownership of securities having less than five percent (5%) of the outstanding voting power of any competitor that are listed on any national securities exchange shall not be deemed to be in violation of this Section 5.3 as long as such Management Seller has no other connection or relationship with such competitor. With respect to the Company’s employees and any of the Company’s customers and suppliers (such customers and suppliers, together with the employees of the Company, being “**Company Contacts**”), each Management Seller covenants that such Management Seller will not directly or indirectly, without Buyer’s prior written consent, solicit or otherwise interfere with the relationship between the Company and any Company Contact.

3. **Management Equity Pool; Management Sellers’ Equity Awards.** At Closing, in order to induce the members of management of the Company and the Management Sellers to remain employees of the Company following the Closing, Buyer shall provide for \$5,000,000 management equity pool, which is composed of: (a) \$2,238,521.54 of performance based restricted stock of the Buyer to be issued under the 2014 Plan to various members of management of the Company other than the Management Sellers (allocated among such management as determined by Buyer and management of the Company), (b) \$1,250,000 of performance based restricted stock units of the Buyer to be issued to each Management Seller (the “**Restricted Stock Units**”), with such restricted stock and restricted stock units to be subject to vesting as agreed to by the parties and with the calculation of amounts with respect to satisfaction of any vesting target determined in accordance with GAAP, but in a manner consistent with the method of calculation set forth in the definition of 2019 EBITDA contained herein, and (c) \$261,478.46 of Replacement Options. The Restricted Stock Units shall not be issued under the 2014 Plan or the Buyer’s Amended and Restated 2006 Omnibus Long-term Incentive Plan. The fair market value of Buyer’s common stock for purposes of the restricted stock and Restricted Stock Units to be issued pursuant to this Section 5.4 shall be \$6.75, which represents the average of the closing prices of Buyer’s common stock as reported by Yahoo! Finance for the ten (10) trading days immediately preceding the Closing Date. Documentation reflecting the issuance of the restricted stock and Restricted Stock Units shall be issued to such members of management as soon as practicable following Closing but in any event within thirty (30) business days following Closing.

#### **ARTICLE 6 CONDITIONS TO CLOSING**

**6.1 Conditions Precedent to the Buyer’s Obligations.** The obligation of the Buyer to purchase the Target Shares and to consummate the other transactions contemplated by this Agreement is expressly subject to the fulfillment or express written waiver of the following conditions on or prior to the Closing Date:

(a) **Representations and Warranties True.** Each of the representations and warranties contained in Articles 2 and 3 shall be true and correct in all material respects (other than representations and warranties that are qualified by materiality, which shall be true and correct in all respects) at and as of the Closing (except as a result of any event or circumstance contemplated, or any action or inaction required, by this Agreement or otherwise approved in writing by the Buyer, and except for any representation or warranty that expressly relates to an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date).

(b) **Covenants Performed.** Each Seller and the Company shall each have performed in all material respects, on or before the Closing Date, all obligations contained in this Agreement that by the terms hereof are required to be performed by them on or before the Closing Date.

(c) **No Injunction, Etc.** There shall not be any order of any court of

competent jurisdiction or governmental agency restraining or invalidating the material transactions that are the subject of this Agreement.

(d) **Required Consents.** All of the approvals, consents and licenses listed on **Schedule 6.1(f)** of the Disclosure Schedule shall have been obtained.

(e) **Escrow Agreement.** The Sellers and the Escrow Agent shall have executed and delivered the Escrow Agreement.

(f) **Employment Agreements.** Buyer shall have executed and delivered an employment agreement, which shall include the terms and conditions of the grants of the Replacement Restricted Stock and the Restricted Stock Units, with each of Rokhfeld and Pinto in substantially in the forms as agreed among such parties (the “**Employment Agreements**”).

(g) **Funds Flow.** The Company shall have delivered to Buyer the Funds Flow Memo.

(h) **Approvals.** The Company shall have received the approval of its board of directors and approval of all stockholders of the Company. The Company shall also have received waivers of any right of first refusal, co-sale or other similar rights as to the purchase of any Company capital stock.

(i) **FIRPTA Certificates.** The Company shall have delivered to Buyer a statement that the interest in the Company is not a United States real property interest as contemplated by Section 1.1445-2(c)(3).

(j) **Accredited Investor Questionnaire.** Rokhfeld and Pinto shall each have furnished to Buyer on or prior to the Closing Date, completed and executed copies of the Accredited Investor Questionnaire provided to them by Buyer, and such completed questionnaires shall be acceptable to Buyer.

(k) **IP Assignments.** The Company shall have furnished to Buyer on or prior to the Closing Date, executed copies of invention assignment agreements for each employee of the Company in a form acceptable to Buyer.

(l) **Schedule 1.1 Agreement Terminations.** The Company shall have furnished to Buyer evidence of termination of those agreements set forth on Schedule 1.1.

**6.2 Conditions Precedent to Each Seller’s Obligations.** The obligation of each Seller to consummate the transactions contemplated by this Agreement is expressly subject to the fulfillment or express written waiver of the following conditions on or prior to the Closing Date:

(a) **Representations and Warranties True.** Each of the representations and warranties of the Buyer contained in Article 4 shall be true and correct in all material respects at and as of the Closing.

(b) **Obligations Performed.** The Buyer shall have performed in all material



respects, on or before the Closing Date, all obligations contained in this Agreement that by the terms hereof are required to be performed by the Buyer on or before the Closing Date.

(c) **No Injunction, Etc.** There shall not be any order of any court of competent jurisdiction or governmental agency restraining or invalidating the material transactions that are the subject of this Agreement.

(d) **Closing Payments.** The Buyer shall have made the payments contemplated by Section 1.2.

(e) **Required Consents.** All of the approvals, consents and licenses listed on **Schedule 6.1(f)** of the Disclosure Schedule shall have been obtained.

(f) **Approvals.** The Buyer shall have received the approval of its board of directors and approval of the stockholders necessary for such action, per the Buyer's governance documents and applicable law.

(g) **Escrow Agreement.** The Buyer and the Escrow Agent shall have executed and delivered the Escrow Agreement.

**6.3 Conditions Precedent to Each Management Seller's Obligations.** The obligation of each Management Seller to consummate the transactions contemplated by this Agreement is expressly subject to the fulfillment or express written waiver of the following conditions on or prior to the Closing Date:

- (a) Buyer shall have executed and delivered the Employment Agreements.
- (b) Buyer shall have issued the Replacement Restricted Stock to the Management Sellers.

#### **ARTICLE 7 SURVIVAL; INDEMNIFICATION**

**7.1 Survival.** The representations and warranties contained in this Agreement and in any certificate delivered at the Closing pursuant to this Agreement shall survive the Closing until the date that is two (2) years after the Closing Date; provided, however that the representations and warranties in: (a) Sections 3.18 (Employees and Compensation) and 3.19 (Benefit Plans) shall survive the Closing until the three (3) year anniversary of the Closing Date and (b) Sections 2.1 (Title), 3.1 (Organization, Power and Standing), 3.2 (Power and Authority), 3.3 (Validity and Enforceability), 3.6 (Capitalization), 3.21 (Brokers) (collectively, the "**Fundamental Representations**") and representations and warranties directly underlying the Specific Indemnity Claims (collectively, the "**Specific Indemnity Representations**") and representations and warranties in Section 3.12 (Intellectual Property) shall survive the Closing until the five (5) year anniversary of the Closing Date; except that the representations and warranties in Section 3.9 (Taxes) and shall survive until sixty (60) calendar days after the applicable statute of limitations (including any extensions thereof either by operation of law or by tolling agreements executed, except, for the avoidance of doubt, to the extent any such tolling agreement is executed in contravention of Section 5.1(c)(iii)) has expired with respect to assessment of the Tax (each of the foregoing survival periods being the applicable "**Cut-Off Date**"). The covenants in this Agreement, to the extent they survive Closing, shall survive for the applicable statute of limitation (including any extensions thereof either by operation of law or by tolling agreements executed) except that Section 5.1 (Tax Matters) shall survive until sixty (60) calendar days after the applicable statute of limitations (including any extensions thereof either by operation of law or by tolling agreements executed, except, for the avoidance of doubt, to the extent any such tolling agreement is executed in contravention of Section 5.1(c)(iii)) applicable thereto has expired. No claim for breach of any representation, warranty, pre-Closing covenant or preClosing agreement may be brought after the applicable Cut-Off Date, except for

claims (a) of which the Representative has been notified in writing with reasonable specificity by the Buyer that an indemnification claim is being made in accordance with Section 7.4 prior to the applicable Cut-Off Date or (b) of which the Buyer has been notified in writing with reasonable specificity by a Seller or the Representative that an indemnification claim is being made in accordance with Section 7.4 prior to the applicable Cut-Off Date. The post-Closing covenants and post-Closing agreements contained in this Agreement shall survive in accordance with their respective terms. Any claims for fraud shall survive indefinitely.

## 7.2 Indemnification of the Buyer.

(a) Subject to the other terms of this Article 7, from and after the Closing, each Seller agrees to indemnify the Buyer and the Company and hold them harmless against and in respect of any and all claims, demands, suits, proceedings, judgments, losses, liabilities, damages, costs and expenses, including without limitation reasonable attorney's fees (collectively, but subject to Section 7.2(d), the "**Losses**") actually incurred by the Buyer and the Company that arise or result from, on a several (but not joint) basis, (i) any breach of any of the representations or warranties contained in Article 2 (as modified by the Disclosure Schedule as supplemented or amended) by such Seller and (ii) any and all Losses arising as a result of the failure of such Seller to perform any of such Seller's covenants or agreements contained herein (in either case of (i) or (ii), such Seller is referred to as a "**Breaching Seller**"). The indemnification obligations set forth in this Section 7.2(a) for Losses shall only apply to the Breaching Seller and shall not exceed, in the aggregate, an amount equal the amount such proceeds received or portion of proceeds to be received by Breaching Seller pursuant to this Agreement.

(b) Subject to the other terms of this Article 7, from and after the Closing, the Sellers (including the Management Sellers) agree to indemnify the Buyer and the Company and hold them harmless against and in respect of any and all Losses (subject to Section 7.2(d)) actually incurred by the Buyer that arise or result from, on a joint and several basis any breach of any of the representations or warranties contained in Article 3 (as modified by the Disclosure Schedule as supplemented or amended) (the "**Article 3 Losses**").

(c) In addition to the foregoing, but subject to Section 7.2(d), the Sellers (including the Management Sellers) agree to indemnify the Buyer and the Company and hold them harmless against and in respect of any and all Losses (collectively, with the Article 3 Losses, the "**Joint Obligations**") in connection with the claims set forth in **Schedule 7.2(c)** of the Disclosure Schedule (the "**Specific Indemnity Claims**").

(d) The Sellers' and Management Sellers' indemnification obligations under Joint Obligations shall be subject to the following limitations and conditions:

(i) in no event shall Buyer's or the Company's Losses include: (A) any indirect, consequential, incidental, exemplary, punitive or other special damages, or (B) any damages for claims of lost profits, loss of future revenue, diminution of value or multiple of earnings or revenue, unless such damages in (A) or (B) are expressly awarded by a court of competent jurisdiction to a third party and pursuant to a claim for indemnification Section 7.4(b);

(ii) no claim shall be made unless the cumulative amount of Losses incurred by the Buyer or the Company exceeds one quarter of one percent (0.25%) of the Closing Purchase Price (the "**Basket**"), at which time the Buyer shall be entitled to an indemnity payment with respect to all such Losses from the first dollar; provided, however, that this provision shall not apply to breaches of representations, warranties, covenants and agreements contained in the Fundamental Representations, Section 3.9 (Taxes), Section 3.12 (Intellectual Property) or Section 5.6 (Tax Matters), the Specific Indemnity Claims or fraud claims;

(iii) the Sellers' (including the Management Sellers') cumulative liability for Joint Obligations (specifically excluding any claim for fraud) shall not exceed, in the aggregate, the Article 3 Indemnity Cap and shall be paid only to the extent there are either: (x) funds available in the Escrow Account or (y) amounts owed (but not paid) to the Sellers pursuant to the Earnout (and, in such case, only in accordance with 7.2(g));

(iv) no claim shall be made with respect to Article 3 Losses to the extent a corresponding reserve for such Losses has been made on the Company's Financial Statements, to the extent that there has been a corresponding equivalent reduction in the calculation of the Closing Working Capital, or to the extent the Buyer may recover under any applicable insurance policy, including, but not limited to, representation and warranty insurance.

(e) For the avoidance of doubt, none of the limitations set forth in Section 7.2 (d) or otherwise in this Agreement limiting indemnification or recovery shall apply to recovery by Buyer of amounts included in Closing Indebtedness or Sellers' Expenses and for all such amounts Buyer shall be entitled to a payment with respect to all such amounts from the first dollar.

(f) In determining the foregoing thresholds and in otherwise determining the amount of any Losses for which the Buyer is entitled to assert a claim for indemnification hereunder, the amount of any such Losses shall be determined after deducting therefrom the amount of any insurance proceeds actually received by the indemnified party (net of any out-of-pocket costs and expenses, deductibles and retentions) and other third-party recoveries (net of any out-of-pocket costs and expenses) actually received by the Buyer or the Company in respect of such Losses (which proceeds and recoveries the Buyer agrees to use, or to cause the Company to use, diligent efforts to obtain) and the net amount of any Tax benefit actually realized in cash by the indemnified party (determined on a "with and without" basis by computing the indemnified party's Tax liability with and without taking the deductibility of such Losses and all related Tax consequences into account) as a result of the deductibility of such Losses, taking into account the receipt of the related indemnity payment by the indemnified party in the taxable year of such Loss or any of the three (3) subsequent taxable years (each, a "**Tax Benefit**"); provided, however, that if such Tax Benefit is recognized by the indemnified party after an indemnification payment is made (but within such three (3) year taxable period), the indemnified party will pay within fifteen (15) calendar days of so recognizing such Tax Benefit to the relevant indemnifying party an amount equal to such reduction in cash Taxes paid; provided, further, if any such Tax Benefit is subsequently disallowed in the form of a final determination by any taxing authority (each, a "**Disallowed Tax Benefit**"), the indemnifying party shall pay an amount equal to such Disallowed Tax Benefit to such indemnified party within fifteen (15) calendar days of such disallowance. For purposes of the preceding sentence, Buyer shall use its reasonable best efforts to obtain or cause to be obtained any such Tax Benefit (including, if necessary, the filing of amended Tax Returns) and to prevent the disallowance of any previously claimed Tax Benefit. If an indemnification payment is received by the Buyer, and the Buyer or the Company later receives insurance proceeds, other third-party recoveries or Tax Benefits in respect of the related Losses, the Buyer shall immediately pay to the indemnifying Sellers a sum equal to the lesser of (y) the actual amount of such insurance proceeds, other third-party recoveries and Tax benefits or (z) the actual amount of the indemnification payment previously paid by such Sellers with respect to such Losses. The Buyer shall use its reasonable best efforts to mitigate the amount of Losses for which it may be entitled to indemnification hereunder.

(g) Any amounts actually owed by the Sellers (including the Management Sellers) under this Agreement pursuant to indemnification rights for Joint Obligations shall be subject to set off against any amounts owed by Buyer to Sellers pursuant to the Earnout or otherwise payable pursuant to this Agreement, provided that (i) Buyer has exhausted all recovery under any applicable insurance policy, (ii) no setoff shall be permitted in excess of the Article 3 Indemnity Cap, and (iii)

no setoff shall be permitted with respect to any salary payable to the Management Sellers. Any amounts actually owed by a Breaching Seller under Section 7.2(a) of this Agreement may be subject to set off against such Breaching Seller's Pro Rata Share of any amounts owed by Buyer to Sellers pursuant to the Earnout, or otherwise payable to such Breaching Seller pursuant to this Agreement, provided that (i) Buyer has exhausted all recovery under any applicable insurance policy, and (ii) no setoff shall be permitted with respect to any salary payable to the Management Sellers.

1. **Indemnification of Seller.** Subject to the other terms of this Article 7, from and after the Closing, the Buyer and the Company agree to indemnify each Seller and hold each Seller harmless from all Losses incurred by any Seller that arise or result from (a) any breach of any of the Buyer's representations and warranties, (b) the failure of the Buyer to perform any of its covenants or agreements set forth herein or (c) the failure of the Company to perform any covenant or agreement set forth herein that by its terms is to be performed after the Closing. The Buyer and the Company's cumulative liability for indemnification payments pursuant to this Section 7.3 for breaches of representation and warranties shall not exceed, in the aggregate, an amount equal to the Closing Purchase Price.

2. **Procedure for Indemnification.**

(a) Any party entitled to make a claim for indemnification pursuant to this Article 7 shall promptly notify the indemnifying party of the claim in writing upon learning of such claim or the facts constituting such claim, describing the claim in reasonable detail, the amount thereof and the basis therefor. The indemnifying party will be relieved of its indemnification obligations hereunder only to the extent that it is prejudiced by the indemnified party's failure to give such prompt notice. The party from whom indemnification is sought shall respond to each such claim within thirty (30) calendar days of receipt of such notice. No action shall be taken pursuant to the provisions of this Agreement or otherwise by the party seeking indemnification (unless reasonably necessary to protect the rights of the party seeking indemnification) until the later of (i) the expiration of the 30-day response period or (ii) thirty (30) calendar days following the expiration of the 30-day response period if a response, received within such 30-day period by the party seeking indemnification, requests an opportunity to cure the matter giving rise to indemnification (and, in such event, the amount of such claim for indemnification shall be reduced to the extent so cured).

(b) If a claim for indemnification pursuant to this Article 7 is based on a claim by a third party, the indemnifying party shall have the right to assume the entire control of the defense thereof, including at its own expense, employment of counsel reasonably satisfactory to the indemnified party, and, in connection therewith, the party claiming indemnification shall cooperate fully with the indemnifying party and make available to the indemnifying party all pertinent information under its control; provided, that the indemnified party may participate in any proceeding with counsel of its choice at its own expense. In such event, the indemnifying party shall have the right to settle or resolve any such claim by a third party; provided, that any such settlement or resolution contemplated by the Sellers or the Representative where the Sellers are the indemnifying party that involves any action by the Buyer other than the payment of money shall not be concluded without the prior written approval of the Buyer, which approval shall not be unreasonably withheld, delayed or conditioned; and, provided further, that any such settlement or resolution contemplated by the Buyer, as the indemnifying party, that involves any action other than the payment of money shall not be concluded without the prior written approval of each of the indemnified Sellers, which approval shall not be unreasonably withheld, delayed or conditioned. Without limiting the generality of the foregoing, the Buyer will, and the Buyer will cause the employees of the Buyer and the Company to, cooperate fully with the Representative and each Seller in connection with any matter for which any Seller is the indemnifying party. Such cooperation shall include, without limitation, (i) assisting in the collection and preparation of discovery materials, (ii) meeting with (and making employees available to meet with) the indemnifying Sellers and/or their counsel to prepare for and/or appear as witnesses at depositions, court proceedings and/or trial and (iii) providing to the Representative and the indemnifying Sellers and/or their counsel all

information under the control of the Buyer or the Company that is deemed necessary by the Representative or the indemnifying Sellers and/or their counsel for the defense or prosecution of such matter. Notwithstanding the above, the indemnifying party will not be entitled to control (but will be entitled to participate at its, or their, own expense in the defense of), and the indemnified party will be entitled to have sole control over, the defense or settlement, compromise, admission or acknowledgment of any third party claim (i) as to which the indemnifying party fails to assume the defense within thirty (30) calendar days after the indemnified party gives notice thereof to the indemnifying party or (ii) to the extent the third party claim seeks an order, injunction, or other equitable relief against the indemnified party which, if successful, would materially adversely affect the business, operations, assets or financial condition of the indemnified party; provided, however, that the indemnified party may make no settlement, compromise, admission or acknowledgment that would give rise to liability on the part of the indemnifying party without the prior written consent of the indemnifying party (which consent may not be unreasonably withheld or delayed). For purposes of this Article 7, (A) if Buyer or the Company comprises the indemnified party, any notices to be given to (or delivered by) the indemnifying party shall be given to (or delivered by) the Representative (acting on behalf of the Sellers), and (B) if Parent or the Company comprises the indemnifying party, any notices to be given to (or delivered by) the indemnified party shall be deemed given to (or delivered by) the Representative (acting on behalf of the Sellers).

(c) **Payments.** Once a loss is agreed to by the indemnifying party or is determined to be payable pursuant to this Article 7, 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. The parties hereto agree that should the indemnifying party not make full payment of any such obligations within such fifteen (15) business day period, any amount payable shall accrue interest from and including the date of agreement of the indemnifying party or the final, non-appealable adjudication to the date such payment has been made at a rate per annum equal to 5%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of calendar days elapsed.

1. **Subrogation.** If (a) any Seller makes an indemnification payment hereunder, and (b) the Buyer or the Company has or may have a claim against a third party (including, without limitation, any insurer) in respect of the related Losses, such Seller shall be subrogated to the rights and claims of the Buyer and the Company, as the case may be, against such third party.

Such Seller shall not, however, have the right to collect aggregate payments from such third party or third parties in excess of the actual amount of the indemnification payment previously paid by such Seller with respect to such Losses. The Buyer and the Company will execute and deliver to such Seller such documents and take such other actions as may reasonably be requested in order to give effect to this Section 7.5.

2. **Tax Treatment of Indemnity Payments.** To the maximum extent permitted by law, it is the intention of the parties to treat any indemnity payment made under this Agreement as an adjustment to the purchase price for all federal, state, local and foreign Tax purposes, and the parties agree to file their Tax Returns accordingly

## **ARTICLE 8 MISCELLANEOUS**

**8.1 Notices.** Any notices, demands and communications to a party hereunder shall be in writing and shall be deemed to have been duly given and received (a) if delivered personally or actually received, as of the date received, (b) if delivered by certified mail, return receipt requested, two (2) business days after being mailed, (c) if delivered by a nationally recognized overnight delivery service, one (1) business day after being sent to such delivery service or (d) if sent via facsimile, electronic mail or similar electronic transmission, as of the date received, to such party at its address set forth below (or such other address as it may from time to time designate in writing to the other parties hereto):

If to the Representative or, after the Closing, the Sellers to:

Shareholder Representative Services LLC  
950 17th Street, Suite 1400  
Denver, Colorado 80202  
Attention: Managing Director  
Telephone: (303) 648-4085 Facsimile: (303) 623-0294  
Email: [deals@srsacquiom.com](mailto:deals@srsacquiom.com)

If to the Buyer or, after the Closing, the Company, to:

Liquidity Services, Inc.  
6931 Arlington Road, Suite 200  
Bethesda, MD 20814 United States  
Attention: Mark Shaffer, General Counsel and Corporate  
Secretary  
Telephone: (202) 467-5741  
Facsimile: (202) 380-0641  
Email: [Mark.Shaffer@liquidityservices.com](mailto:Mark.Shaffer@liquidityservices.com)

**8.2 No Waiver.** No failure of any party to exercise and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

**8.3 Amendments and Waivers.** This Agreement may be modified, amended or waived only by a writing signed by the Company, the Buyer and the Representative.

**8.4 Choice of Law; Forum.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to the choice of law provisions thereof. Any proceeding arising out of or relating to this Agreement shall be brought in the courts of the State of Delaware, or, if it has or can acquire jurisdiction, in the United States District Courts located in the State of Delaware. This provision may be filed with any court as written evidence of the knowing and voluntary irrevocable agreement between the parties to waive any objections to jurisdiction, venue or convenience of forum.

**8.5 Binding Effect and Benefits.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns, but may not be assigned by any party without the prior written consent of the Representative in the case of a purported assignment by the Buyer, or by the Buyer in the case of a purported assignment by any Seller.

**8.6 Integration; Schedules.** This writing, the annexes, exhibits and schedules attached hereto and the Disclosure Schedule embody the entire agreement and understanding among the parties with respect to this transaction and supersede all prior discussions, understandings and agreements concerning the matters covered hereby, except as set forth in Section 5.1(b). Information set forth on the Disclosure Schedule shall be deemed to qualify each section of this Agreement to which such information is applicable (regardless of whether or not such other section is qualified by reference to the Disclosure Schedule), so long as application to such section is reasonably discernible from the reading of such disclosure. No information set forth on any schedule to the Disclosure Schedule shall be deemed to broaden in any way the scope of any Seller's or the Company's representations and warranties. The inclusion of an item on any schedule to the Disclosure

Schedule is not evidence of the materiality of such item for purposes of this Agreement or otherwise, or that such item is a disclosure required under the Agreement. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any schedule to the Disclosure Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement or item, copies of which have been made available to the Buyer. No disclosure in any schedule to the Disclosure Schedule relating to any possible breach or violation of any agreement, Authorization or Legal Requirement shall be construed as an admission or indication that any such breach or violation exists or has actually occurred, or shall constitute an admission of liability to any third party.

**8.7 Counterparts/Execution under Seal.** This Agreement may be executed in two or more counterparts, and with counterpart signature pages, each of which shall be an original, but all of which together shall constitute one and the same Agreement, binding on all of the parties hereto notwithstanding that all such parties have not signed the same counterpart. Counterpart signature pages to this Agreement transmitted by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature. Pursuant to Delaware law, this Agreement has been executed by the parties under seal.

**8.8 Limitation on Scope of Agreement.** In the event that any court of competent jurisdiction shall determine that any one or more of the provisions or part of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement; but this Agreement shall be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein, and such provisions or part modified and reformed, either through negotiations of the Buyer and the Representative or by a governmental authority of competent jurisdiction, so that it would be valid, legal and enforceable to the maximum extent possible.

### **8.9 Sellers’ Representative.**

(a) By voting in favor of the adoption of this Agreement, the approval of the principal terms of the Agreement, and the consummation of the transactions contemplated by this Agreement, or participation in such transactions and receiving the benefits thereof, including the right to receive the consideration payable in connection with such transactions, each Seller hereby irrevocably authorizes and designates the Representative as the representative and agent of and on behalf of such Seller, and as such Seller’s true and lawful attorney in fact, with full power and authority in such Seller’s name, for all purposes in connection with this Agreement and any agreements ancillary hereto, including: (i) accepting notices on behalf of the Sellers under this Agreement and any Transaction Document; (ii) providing any consent, certificate, instrument, receipt or approval on behalf of all Sellers under this Agreement, and making, enforcing or settling any claim under Sections 1, 5, 6, 7 on behalf of all of the Sellers; and (iii) taking any and all other actions and doing any and all other things provided in, or contemplated by, this Agreement or any Transaction Document to be performed by any Seller (to the extent all of the other Sellers are also required to perform) arising out of the transactions contemplated hereby or thereby as Representative, in its sole discretion, determines to be necessary, appropriate or desirable. Notwithstanding the foregoing sentence, Representative may not (x) increase any liability or obligation of a Seller under this Agreement or any Transaction Document without the prior written consent of such Seller or (y) take any action (including, without limitation, executing and delivering any consent, certificate, instrument, receipt, or approval) in respect of a Seller that discriminates against that Seller relative to the effect of such action on the other Sellers unless the affected Seller gives his or its prior written consent; provided that for the avoidance of doubt, the Representative consenting to all or a portion of an indemnification claim under Section 7, or entering into a settlement agreement with respect

thereto, in accordance with the procedures, limitations of liability and Representative authority set forth in this Agreement shall not be deemed to implicate the foregoing clause (y) of the previous sentence or require the prior written approval of such Sellers pursuant to the previous sentence. The authorization of Representative is coupled with an interest and is in consideration of the mutual covenants in this Agreement and is irrevocable (unless a court of competent jurisdiction determines in a final, non-appealable judgment that Representative has engaged in willful misconduct or gross negligence in connection herewith, in which case that Seller may, upon written notice to Buyer and Representative, revoke the appointment) and will not be terminated by operation of law, whether by the death or incapacity of any Seller.

(b) Representative shall act as joint agent for all of the Sellers, shall have the authority to bind each such Seller in accordance with this Agreement and any agreements ancillary hereto, and the Buyer may rely on such appointment and authority and on the actions taken, decisions made or instructions given by Representative unless and until Buyer receives written notice of the appointment of a successor chosen by the Sellers, acting by two-thirds consent (determined based on the Sellers' who are to receive at least two-thirds of the Closing Purchase Price as allocated in accordance with Annex I), upon thirty (30) days' prior written notice to the Buyer. Representative may (i) resign at any time, or (ii) be removed by those Sellers who are to receive at least two-thirds of the Closing Purchase Price as allocated in accordance with Annex I, in each case upon thirty (30) days' prior written notice, whereupon the Sellers who are to receive at least two-thirds of the Closing Purchase Price as allocated in accordance with Annex I shall appoint and designate a new Representative. Further, the Representative shall be automatically removed (the "**Automatic Removal**") upon a final nonappealable determination by a court of competent jurisdiction or upon entry into a final binding settlement that the Representative has committed gross negligence, willful misconduct or fraud in any action taken hereunder or under its engagement letter. Notwithstanding the first sentence of this Section 8.9(b), in the event of Automatic Removal, the Sellers who are to receive a majority of the Closing Purchase Price as allocated in accordance with Annex I shall appoint and designate a new Representative.

(c) The Representative will incur no liability of any kind with respect to any action or omission by the Representative in connection with the Representative's services pursuant to this Agreement and any agreements ancillary hereto, except in the event of liability directly resulting from the Representative's gross negligence or willful misconduct. The Representative shall not be liable for any action or omission pursuant to the advice of counsel. Each of the Sellers shall jointly and severally indemnify and hold harmless Representative from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "**Representative Losses**") arising out of or in connection with the Representative's execution and performance of this Agreement and any agreements ancillary hereto, in each case as such Representative Loss is suffered or incurred; provided, that in the event that any such Representative Loss is finally adjudicated to have been directly caused by the gross negligence or willful misconduct of the Representative, the Representative will reimburse the Sellers the amount of such indemnified Representative Loss to the extent attributable to such gross negligence or willful misconduct. If not paid directly to the Representative by the Sellers, any such Representative Losses may be recovered by the Representative (i) the funds in the Expense Fund, (ii) from any Earnout at such time as any amounts thereof would otherwise be distributable to the Sellers, and (iii) the Escrow Amount, but only after and to the extent that any remaining amount otherwise becomes distributable to the Sellers; provided, that while this section allows the Representative to be paid from the aforementioned sources of funds, this does not relieve the Sellers from their obligation to promptly pay such Representative Losses as they are suffered or incurred, nor does it prevent the Representative from seeking any remedies available to it at law or otherwise. In no event will the Representative be required to advance its own funds on behalf of the Sellers or otherwise. Notwithstanding anything in this Agreement



to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Sellers set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Representative under this Section. The foregoing indemnities will survive the Closing, the resignation or removal of the Representative or the termination of this Agreement.

(d) At Closing, as between the Sellers, each Seller agrees that \$50,000 of the amount payable in respect of the Closing Purchase Price (as allocated in accordance with Annex I) (such funds, the “**Expense Fund**”) shall be wired into a segregated bank account of Representative (the “**Expense Fund Account**”). The Expense Fund will be used for the purposes of paying directly, or reimbursing the Representative for, any third party expenses pursuant to this Agreement or the Escrow Agreement and any agreements ancillary hereto. The Sellers will not receive any interest or earnings on the Expense Fund and irrevocably transfer and assign to the Representative any ownership right that they may otherwise have had in any such interest or earnings. The Representative will not be liable for any loss of principal of the Expense Fund other than as a result of its gross negligence or willful misconduct. The Representative will hold these funds separate from its corporate funds, will not use these funds for its operating expenses or any other corporate purposes and will not voluntarily make these funds available to its creditors in the event of bankruptcy. As soon as practicable following the completion of the Representative’s responsibilities, the Representative will deliver any remaining balance of the Expense Fund to the Escrow Agent for further distribution to the Sellers. For tax purposes, the Expense Fund will be treated as having been received and voluntarily set aside by the Sellers at the time of Closing. Representative shall have the right to recover, at its sole discretion, from such amount, any amounts to which it is entitled pursuant to the indemnification provisions of Section 8.9(c).

(e) The Sellers hereby authorize the Representative to direct the Escrow Agent to distribute from time to time amounts from the Escrow Account any amounts owed to the Buyer once the definitive Closing Purchase Price Certificate has been determined under Section 1.7 and all Disputed Items have been determined and settled under Section 1.7. At Closing, the Company will deliver to the Representative a spreadsheet containing all applicable wire information for each Seller. Each Seller shall deliver to the Company (or Buyer) such information as it may reasonably require in connection with the preparation of such spreadsheet. Each Seller hereby acknowledges and agrees that the Representative is entitled to rely upon such spreadsheet and the Representative is hereby authorized to direct the Escrow Agent to complete any wire transfers in accordance therewith upon the Escrow Final Release Date (or earlier disbursed per the terms of the Escrow Agreement terms, with the Escrow Release Amounts (if any) released on the first, second, third or fourth anniversary of the Closing or other date, as applicable. After Closing, each Seller hereby agrees to deliver to the Company and the Representative any updates that may be required to ensure that the information previously delivered remains true and correct, and upon receipt of such information, the Company will update the spreadsheet and deliver it to the Representative (which shall be entitled to rely upon it as so updated).

**8.10 Headings.** The headings of Articles and Sections herein are inserted for convenience of reference only and shall be ignored in the construction or interpretation hereof.

**8.11 Expenses.** All legal and other costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, except as otherwise expressly provided herein.

**8.12 No Third-Party Beneficiaries.** Except as otherwise expressly set forth in this Agreement, including Section 5.4 hereof, nothing in this Agreement will be construed as giving any third party any right, remedy or claim under or in respect of this Agreement or any provision hereof.

**8.13 Further Assurances.** Following the Closing, the parties shall execute and deliver to each other such documents and take such other actions as may reasonably be requested in order to consummate more effectively the transactions contemplated hereby.

**8.14 “Knowledge” Defined.** As used herein, “to the knowledge of the Company,” “to the Company’s knowledge” or any other similar phrase shall mean the actual knowledge of Rokhfeld, Pinto, Robin Hargedon, Brett Ward, Jake Lerman, Nicholas Brown, Samuel Mulkey or Steven Glod after reasonable inquiry.

**8.15 Publicity.** Pending the Closing, no party shall issue a press release or make any other public announcement concerning the transactions contemplated by this Agreement without the prior written consent of the Representative and the Buyer, except to the extent required by law, in which case the other parties hereto shall have the opportunity to review and comment prior to disclosure.

**8.16 Entire Agreement.** This Agreement, together with the exhibits and schedules to this Agreement, embodies the entire agreement and understanding among Buyer, the Company and Sellers with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the parties relating to the subject matter hereof and thereof (including, without limitation, that certain Letter of Intent dated May 3, 2018). If there is a conflict between the terms, conditions, representations, warranties and covenants contained in this Agreement and any other document, then the provisions in this Agreement shall control.

**8.17 No Strict Construction.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the other agreements and documents contemplated herein. In the event an ambiguity or question of intent or interpretation arises under any provision of this Agreement or any other agreement or documents contemplated herein, this Agreement and such other agreements or documents shall be construed as if drafted jointly by the parties thereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authoring any of the provisions of this Agreement or any other agreements or documents contemplated herein.

## ARTICLE 9 DEFINITIONS

The following terms, as used in this Agreement, have the meanings given to them in the section or place indicated below:

<b>Term:</b>	<b>Section or Place Where Defined:</b>
2014 Plan	Section 1.3 (c)
2019 EBITDA	Section 1.2(a)
Aggregate Option Cash Amount	Section 1.3(b)
Article 3 Indemnity Cap	Section 1.2(a)
Article 3 Losses	Section 7.2(b)
Affiliate	Section 3.23
Aggregate Option Value	Section 1.3(c)
Agreement	Preamble
Applicable Anti-Corruption Laws	Section 3.25(a)
Associated Person	Section 3.25(b)
Assumed Options	Section 1.3(c)
Authorizations	Section 3.16
Automatic Removal	Section 8.9(b)
Balance Sheet	Section 3.7(a)
Balance Sheet Date	Section 3.7(a)
Basket	Section 7.2(d)(ii)

Benefit Plans	Section 3.19(a)
Buyer	Preamble
Closing	Section 1.4
Closing Date	Section 1.4
Closing Indebtedness	Section 1.2(a)
Closing Purchase Price	Section 1.2(a)
Closing Purchase Price Certificate	Section 1.7(a)
Closing Working Capital	Section 1.2(a)
Code	Section 3.9(b)(i)
Common / Preferred Amount Per Share	Section 1.3(a)
Company	Preamble
Company Charter Documents	Section 3.1(b)
Company Contacts	Section 5.3
Company Intellectual Property	Section 3.12(a)
Company Material Adverse Effect	Section 3.8
Company Option Plan	Section 1.3(a)
Company Options	Section 1.3(a)
Cut-Off Date	Section 7.1
Delaware Company Charter Documents	Section 3.1(a)
Disallowed Tax Benefit	Section 7.2(f)
Disclosure Schedule	Article 2 Preamble
Disputed Items	Section 1.7(c)
Disputed Items Notice	Section 1.7(b)
Earnout	Section 1.2(a)
Earnout Period	Section 1.2(a)
Earnout Statement	Section 1.8(a)
Employment Agreements	Section 6.1(g)
Environment	Section 3.22(a)(i)
Environmental Claim	Section 3.22(a)(ii)
Environmental Laws	Section 3.22(a)(iii)
ERISA	Section 3.19(a)
Escrow Account	Section 1.2(a)
Escrow Agent	Section 1.2(a)
Escrow Agreement	Section 1.2(a)
Escrow Amount	Section 1.2(a)
Estimated Closing Purchase Price	Section 1.2(a)
Estimated Closing Purchase Price Certificate	Section 1.2(c)
Expense Fund	Section 8.9(d)
Expense Fund Account	Section 8.9(d)
Financial Statements	Section 3.7(a)
Fully Diluted Share Number	Section 1.3(a)
Fundamental Representations	Section 7.1
Funds Flow Memo	Section 1.2(a)
GAAP	Section 1.2(a)
Hazardous Substances	Section 3.22(a)(iv)
Independent Accountant	Section 1.7(c)
Independent Accountant's Report	Section 1.8(c)
Initial Escrow Amount	Section 1.2(d)(iii)
Intellectual Property	Section 3.12(a)
In-the-Money Option	Section 1.3(a)

In Licenses	Section 3.12(e)
IP Licenses	Section 3.12(c)
Knowledge	Section 9.14
Legal Requirements	Section 3.17
Liens	Section 1.2(c)
Losses	Section 7.2(a)
Major Customer	Section 3.24
Major Supplier	Section 3.24
Management Sellers	Section 5.3
Material Contract	Section 3.13
Out-of-the-Money Option	Section 1.3(a)
Out Licenses	Section 3.12(d)
Permitted Liens	Section 3.10
Person	Section 3.9(b)(vi)
Pinto	Preamble
Post-Closing Tax Period	Section 3.9(b)(ii)
Pre-Closing Tax Period	Section 3.9(b)(iii)
Pre-Closing Taxes	Section 3.9(b)(iv)
Pro Rata Share	Section 2.1
Replacement Options	Section 1.3(c)
Replacement Restricted Stock	Section 1.3(e)
Representative	Preamble
Representative Losses	Section 8.9(c)
Restricted Activities	Section 5.3
Restricted Period	Section 5.3
Restricted Securities	Section 2.7
Restricted Stock Units	Section 5.4
Rokhfeld	Preamble
Sanctions	Section 3.28
Securities Act	Section 2.7(a)
Seller	Preamble
Seller's Expenses	Section 1.2(a)
Sellers	Preamble
Shares Conversion Number	Section 1.3(e)
Specific Indemnity Claims	Section 7.2(c)
Straddle Period	Section 3.9(b)(v)
Strike Price Spread	Section 1.3(c)
Subsidiaries	Section 3.4
Target Shares	Introduction
Target Working Capital	Section 1.2(a)
Tax or Taxes	Section 3.9(b)(vi)
Tax Accountant	Section 5.1(c)(iv)
Tax Benefit	Section 7.2(f)
Tax Matter	Section 5.1(d)
Tax Returns	Section 3.9(b)(vii)
Transaction Documents	Section 3.2
Treasury Regulations	Section 3.9(b)(viii)
Unvested Company Options	Section 1.3(a)

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first above written.

**COMPANY:**  
MACHINIO CORP.

By: /s/ Dmitry Rokhfeld  
Name: Dmitry Rokhfeld  
Title: Chief Executive Officer  
Address: 333 W Hubbard St. #1012  
Chicago, IL, 60654

**BUYER:**  
LIQUIDITY SERVICES, INC.

By: /s/ William P. Angrick, III  
Name: William P. Angrick, III  
Title: Chairman of the Board and Chief Executive Officer

**SELLERS:**

Dmitriy Rokhfeld

Dan Pinto

Aryeh Kushner

Justine Smithline

Oleg Kaplun

Pierre Peigne

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**REPRESENTATIVE:**

SHAREHOLDER REPRESENTATIVE SERVICES LLC,  
solely in its capacity as the Representative

By: /s/ Sam Riffe

Name: Sam Riffe

Title: Executive Director

Address: 950 17th Street Suite 1400  
Denver, CO 80202

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

Name: Dmitriy Rokhfeld

By: /s/ Dmitriy Rokhfeld

Address: 333 W Hubbard St. #1012

Chicago, IL 60654

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

Name: Dan Pinto

By: /s/ Dan Pinto

Address: 701 S Wells st #3004  
Chicago, IL 60607



**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

ENTREPRENEURS ROUNDTABLE ACCELERATOR INVSETORS IV-VII, LLC

By: Entrepreneurs Roundtable Accelerator Capital IV-VII, LLC

Its: Managing Member

By: /s/ Jonathan Axelrod

Name: Jonathan Axelrod

Title: Managing Director

Address: 415 Madison Avenue, 4th Floor

New York, NY 10017

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**  
RITCHIE BROS. HOLDINGS  
LUXEMBOURG SARLS

By: /s/ Darren Watt  
Name: Darren Watt  
Title: Director  
Address: 9500 Glenlyon Pkwy  
Burnaby, B.C.  
V5J0C6

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

Name: Oleg Kaplun

By: /s/ Oleg Kaplun

Address: PO Box 3272

New York, NY 10008

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

ELEVATION INVESTORS II - SERIES Q, LLC

By: /s/ Adam Hopkins

Name: Adam Hopkins

Title: Member

Address: 3000 Sand Hill Road, Suite 4-140  
Menlo Park, CA 94025

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

**ENTREPRENEURS EXPANSION FUND I, L.P.**

By: Entrepreneurs Expansion Fund I GP, LLC

Its: General Partner

By: /s/ Jonathan Axelrod

Name: Jonathan Axelrod

Title: Managing Director

Address: 415 Madison Avenue, 4th Floor  
New York, NY 10017

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

SUHLER FAMILY INVESTMENT OFFICE, LLC

By: /s/ John Suhler

Name: John Suhler

Title: Principal

Address: 200 Long Neck Point Rd  
Darien, CT 06820

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**  
GEMG, LLC

By: /s/ Mikhail Gurevich  
Name: Mikhail Gurevich  
Title: Managing Member  
Address: 4545 Center Blvd, Apt 4010  
Long Island City, NY 11109

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

Name: Stephen Harper

By: /s/ Stephen Harper

Address: 25 Tregunter Road  
London SW10 9LS United Kingdom



**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

Name: Aryeh Kushner

By: /s/ Aryeh Kushner

Address: 42 Adrian Court  
Burlingame, CA 94010

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

ESSS VENTURES

By: /s/ Sean Sullivan

Name: Sean Sullivan

Title: Partner

Address: 11 Woodbime St  
Coram, NY 11727

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

**THE COLONIAL GROUP, LLC**

By: /s/ Ethan Brodsky

Name: Ethan Brodsky

Title: President

Address: 15 Engle Street, Suite 206  
Englewood NJ 07631

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

Name: Justin Smithline

By: /s/ Justin Smithline

Address: 255 Brunswick St., #612  
Jersey City, NJ 07302

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

Name: Pierre Peigne

By: /s/ Pierre Peigne

Address: 15 Lonsdale Road  
London W11 2BY, UK

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

Name: Rony Kahan

By: /s/ Rony Kahan

Address: 7300 W Rim Dr

Austin, TX 78731

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**  
**WELLTECH FUNDING**

By: /s/ Peter Ellis  
Name: Peter Ellis  
Title: Manager  
Address: 200 Biscayne Blvd Way, #4804  
Miami, FL 33131

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

DEEP CREEK CAPITAL VENTURES LLC

By: /s/ Joshua Abramowitz

Name: Joshua Abramowitz

Title: Manager

Address: 2 Chedworth Road  
Scarsdale, NY 10583



**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first above written.

**SELLER:**

**MAXFIELD CAPITAL FUND I, L.P.**

By: Maxfield Capital Partners

Its: General Partner

By: /s/ Nicole Ramroop

Name: Nicole Ramroop

Title: Director

**ANNEX I  
STOCKHOLDERS**

SHAREHOLDER	SHARES HELD	PRO RATA SHARE
Dmitriy Rokhfeld	2,300,000 Common Shares	21.045410%
Dan Pinto	2,300,000 Common Shares	21.045410%
Entrepreneurs Roundtable Accelerator Investors IV-VII, LLC	514,464 Common Shares	4.707437%
Ritchie Bros. Holdings Luxembourg SARL	3,866,873 Series A Preferred Shares	35.382577%
Oleg Kaplun	45,316 Series A Preferred Shares	0.414649%
Elevation Investors II - Series Q, LLC	380,598 Series A Preferred Shares	3.482539%
Entrepreneurs Expansion Fund I, L.P.	89,531 Series A Preferred Shares	0.819225%
Suhler Family Investment Office, LLC	27,020 Series A Preferred Shares	0.247238%
Maxfield Capital Fund I, L.P.	603,770 Series A Preferred Shares	5.524603%
GEMG, LLC	44,946 Series A Preferred Shares	0.411264%
Stephen Harper	45,074 Series A Preferred Shares	0.412435%

SHAREHOLDER	SHARES HELD	PRO RATA SHARE
Aryeh Kushner	121,650 Series A Preferred Shares	1.113119%
ESSS Ventures	121,722 Series A Preferred Shares	1.113778%
The Colonial Group, LLC	48,710 Series A Preferred Shares	0.445705%
Justin Smithline	18,263 Series A Preferred Shares	0.167110%
Pierre Peigné	36,532 Series A Preferred Shares	0.334274%
Rony Kahan	242,479 Series A Preferred Shares	2.218726%
Welltech Funding	60,914 Series A Preferred Shares	0.557374%
Deep Creek Capital Ventures LLC	60,887 Series A Preferred Shares	0.557127%

**EXHIBIT A**  
**ESCROW AGREEMENT**

**CERTIFICATION PURSUANT TO RULE 13a-14(a)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, William P. Angrick, III, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Liquidity Services, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2018

/s/ William P. Angrick, III

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By: William P. Angrick, III  
Title: *Chairman of the Board of Directors and  
Chief Executive Officer*

**CERTIFICATION PURSUANT TO RULE 13a-14(a)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

I, Jorge A. Celaya, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Liquidity Services, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2018

/s/ Jorge A. Celaya

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By: Jorge A. Celaya

Title: *Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)*

**CERTIFICATION PURSUANT TO****18 U.S.C. SECTION 1350,****AS ADOPTED PURSUANT TO****SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Liquidity Services, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2018 as filed with the Securities and Exchange Commission (the "Report"), I, William P. Angrick, III, Chief Executive Officer of the Company, certify, to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 2, 2018

/s/ William P. Angrick, III

William P. Angrick, III

*Chairman of the Board of Directors and Chief Executive Officer*

THE FOREGOING CERTIFICATION IS BEING FURNISHED SOLELY PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 AND IS NOT BEING FILED AS PART OF THE FORM 10-Q OR AS A SEPARATE DISCLOSURE DOCUMENT.

A SIGNED ORIGINAL OF THIS WRITTEN STATEMENT REQUIRED BY SECTION 906, OR OTHER DOCUMENT AUTHENTICATING, ACKNOWLEDGING, OR OTHERWISE ADOPTING THE SIGNATURE THAT APPEARS IN TYPED FORM WITHIN THE ELECTRONIC VERSION OF THIS WRITTEN STATEMENT REQUIRED BY SECTION 906, HAS BEEN PROVIDED TO LIQUIDITY SERVICES, INC. AND WILL BE RETAINED BY LIQUIDITY SERVICES, INC. AND FURNISHED TO THE SECURITIES AND EXCHANGE COMMISSION OR ITS STAFF UPON REQUEST.



**CERTIFICATION PURSUANT TO****18 U.S.C. SECTION 1350,****AS ADOPTED PURSUANT TO****SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Liquidity Services, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2018 as filed with the Securities and Exchange Commission (the "Report"), I, Jorge A. Celaya, Chief Financial Officer of the Company, certify, to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 2, 2018

/s/ Jorge A. Celaya

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Jorge A. Celaya*Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)*

THE FOREGOING CERTIFICATION IS BEING FURNISHED SOLELY PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 AND IS NOT BEING FILED AS PART OF THE FORM 10-Q OR AS A SEPARATE DISCLOSURE DOCUMENT.

A SIGNED ORIGINAL OF THIS WRITTEN STATEMENT REQUIRED BY SECTION 906, OR OTHER DOCUMENT AUTHENTICATING, ACKNOWLEDGING, OR OTHERWISE ADOPTING THE SIGNATURE THAT APPEARS IN TYPED FORM WITHIN THE ELECTRONIC VERSION OF THIS WRITTEN STATEMENT REQUIRED BY SECTION 906, HAS BEEN PROVIDED TO LIQUIDITY SERVICES, INC. AND WILL BE RETAINED BY LIQUIDITY SERVICES, INC. AND FURNISHED TO THE SECURITIES AND EXCHANGE COMMISSION OR ITS STAFF UPON REQUEST.