

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form 10 -Q

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

For the Quarterly Period Ended June 30, 2017

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: 001-35444

YELP INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

20-1854266
(I.R.S. Employer
Identification No.)

140 New Montgomery Street, 9th Floor
San Francisco, CA
(Address of Principal Executive Offices)

94105
(Zip Code)

(415) 908-3801
(Registrant's Telephone Number, Including Area Code)

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 Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit 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 (Do not check if a smaller reporting company) ☐

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 ☒

As of July 31, 2017, there were 81,803,464 shares of registrant's common stock, par value \$0.000001 per share, issued and outstanding.

Y E L P I N C .
Q U A R T E R L Y R E P O R T O N F O R M 10-Q
T A B L E O F C O N T E N T S

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Unless the context suggests otherwise, references in this Quarterly Report on Form 10-Q (the “Quarterly Report”) to “Yelp,” the “Company,” “we,” “us” and “our” refer to Yelp Inc. and, where appropriate, its subsidiaries.

Unless the context otherwise indicates, where we refer in this Quarterly Report to our “mobile application” or “mobile app,” we refer to all of our applications for mobile-enabled devices; references to our “mobile platform” refer to both our mobile app and the versions of our website that are optimized for mobile-based browsers. Similarly, references to our “website” refer to versions of our website dedicated to both desktop- and mobile-based browsers, as well as the U.S. and international versions of our website.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report contains forward-looking statements that involve risks, uncertainties and assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. The statements contained in this Quarterly Report that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Forward-looking statements are often identified by the use of words such as, but not limited to, “anticipate,” “believe,” “can,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “project,” “seek,” “should,” “target,” “will,” “would” and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management, which are in turn based on information currently available to management. Such forward-looking statements are subject to risks, uncertainties and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section entitled “*Risk Factors*” included under Part II, Item 1A below. Furthermore, such forward-looking statements speak only as of the date of this report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

NOTE REGARDING METRICS

We review a number of performance metrics to evaluate our business, measure our performance, identify trends in our business, prepare financial projections and make strategic decisions. Please see the section titled “ *Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Metrics* ” for information on how we define our key metrics. Unless otherwise stated, these metrics do not include metrics from Yelp Eat24, Yelp Reservations, Yelp Nowait, Turnstyle or from our business owner products.

While our metrics are based on what we believe to be reasonable calculations, there are inherent challenges in measuring usage across our large user base. Certain of our performance metrics, including the number of unique devices accessing our mobile app, are tracked with internal company tools, which are not independently verified by any third party and have a number of limitations. For example, our metrics may be affected by mobile applications that automatically contact our servers for regular updates with no discernible user action involved; this activity can cause our system to count the device associated with the app as an app unique device in a given period.

Our metrics that are calculated based on data from third parties — the number of desktop and mobile website unique visitors — are subject to similar limitations. Our third-party providers periodically encounter difficulties in providing accurate data for such metrics as a result of a variety of factors, including human and software errors. In addition, because these traffic metrics are tracked based on unique cookie identifiers, an individual who accesses our website from multiple devices with different cookies may be counted as multiple unique visitors, and multiple individuals who access our website from a shared device with a single cookie may be counted as a single unique visitor. As a result, the calculations of our unique visitors may not accurately reflect the number of people actually visiting our website.

Our measures of traffic and other key metrics may also differ from estimates published by third parties (other than those whose data we use to calculate such metrics) or from similar metrics of our competitors. We are continually seeking to improve our ability to measure these key metrics, and regularly review our processes to assess potential improvements to their accuracy. From time to time, we may discover inaccuracies in our metrics or make adjustments to improve their accuracy, including adjustments that may result in the recalculation of our historical metrics. We believe that any such inaccuracies or adjustments are immaterial unless otherwise stated.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

YELP INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)
(Unaudited)

	June 30, 2017	December 31, 2016
Assets		
Current assets:		
Cash and cash equivalents	\$ 319,754	\$ 272,201
Short-term marketable securities	192,041	207,332
Accounts receivable (net of allowance for doubtful accounts of \$5,464 and \$4,992 at June 30, 2017 and December 31, 2016, respectively)	68,778	68,725
Prepaid expenses and other current assets	14,298	12,921
Total current assets	594,871	561,179
Property, equipment and software, net	91,714	92,440
Intangibles, net	45,411	32,611
Goodwill	216,440	170,667
Restricted cash	18,539	17,317
Other non-current assets	3,140	10,992
Total assets	\$ 970,115	\$ 885,206
Liabilities and Stockholders' Equity		
Current liabilities		
Accounts payable – trade	\$ 3,183	\$ 2,003
Accounts payable – merchant share	17,210	18,352
Accrued liabilities	40,936	36,730
Deferred revenue	3,800	3,314
Total current liabilities	65,129	60,399
Long-term liabilities	18,320	17,621
Total liabilities	83,449	78,020
Commitments and contingencies (Note 11)		
Stockholders' equity		
Common stock, \$0.000001 par value - 200,000,000 and 200,000,000 shares authorized, 81,752,997 and 79,429,833 shares issued and outstanding at June 30, 2017 and December 31, 2016, respectively	-	-
Additional paid-in capital	965,049	892,983
Accumulated other comprehensive loss	(10,972)	(15,576)
Accumulated deficit	(67,411)	(70,221)
Total stockholders' equity	886,666	807,186
Total liabilities and stockholders' equity	\$ 970,115	\$ 885,206

See notes to condensed consolidated financial statements.

YELP INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share data)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Net revenue	\$ 208,864	\$ 173,428	\$ 406,187	\$ 332,041
Costs and expenses:				
Cost of revenue (exclusive of depreciation and amortization shown separately below)	18,056	15,087	34,970	30,165
Sales and marketing	105,232	94,402	214,518	190,030
Product development	42,088	33,098	81,959	65,320
General and administrative	25,961	23,464	52,275	45,233
Depreciation and amortization	10,662	8,564	20,813	16,753
Restructuring and integration	21	-	251	-
Total costs and expenses	202,020	174,615	404,786	347,501
Income (loss) from operations	6,844	(1,187)	1,401	(15,460)
Other income, net	864	367	1,594	625
Income (loss) before income taxes	7,708	(820)	2,995	(14,835)
(Provision for) benefit from income taxes	(118)	1,269	(185)	(168)
Net income (loss) attributable to common stockholders ⁽¹⁾	\$ 7,590	\$ 449	\$ 2,810	\$ (15,003)
Net income (loss) per share attributable to common stockholders ⁽¹⁾				
Basic	\$ 0.09	\$ 0.01	\$ 0.03	\$ (0.20)
Diluted	\$ 0.09	\$ 0.01	\$ 0.03	\$ (0.20)
Weighted-average shares used to compute net income (loss) per share attributable to common stockholders ⁽¹⁾				
Basic	80,996	76,467	80,422	76,176
Diluted	84,860	79,280	85,132	76,176

(1) The structure of the Company's common stock changed in the year ended December 31, 2016. Refer to Note 12 for details.

See notes to condensed consolidated financial statements.

YELP INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(In thousands)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Net income (loss)	\$ 7,590	\$ 449	\$ 2,810	\$ (15,003)
Other comprehensive income (loss):				
Foreign currency translation adjustments	3,533	(947)	4,604	795
Other comprehensive income (loss)	3,533	(947)	4,604	795
Comprehensive income (loss)	\$ 11,123	\$ (498)	\$ 7,414	\$ (14,208)

See notes to condensed consolidated financial statements.

YELP INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2017	2016
OPERATING ACTIVITIES:		
Net income (loss)	\$ 2,810	\$ (15,003)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	20,813	16,753
Provision for doubtful accounts and sales returns	8,859	7,425
Stock-based compensation	49,699	39,836
Other adjustments	267	884
Changes in operating assets and liabilities:		
Accounts receivable	(7,728)	(13,237)
Prepaid expenses and other assets	(353)	3,492
Accounts payable, accrued expenses and other liabilities	1,472	5,955
Deferred revenue	484	405
Net cash provided by operating activities	76,323	46,510
INVESTING ACTIVITIES:		
Purchases of marketable securities	(124,855)	(161,854)
Maturities of marketable securities	140,000	152,500
Acquisitions of businesses, net of cash received	(50,544)	-
Purchases of property, equipment and software	(4,079)	(12,438)
Capitalized website and software development costs	(8,030)	(6,993)
Other investing activities	(1,164)	(948)
Net cash used in investing activities	(48,672)	(29,733)
FINANCING ACTIVITIES:		
Proceeds from issuance of common stock for employee stock-based plans	19,354	7,855
Net cash provided by financing activities	19,354	7,855
EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS	548	50
CHANGE IN CASH AND CASH EQUIVALENTS	47,553	24,682
CASH AND CASH EQUIVALENTS—Beginning of period	272,201	171,613
CASH AND CASH EQUIVALENTS—End of period	\$ 319,754	\$ 196,295
SUPPLEMENTAL DISCLOSURES OF OTHER CASH FLOW INFORMATION:		
Cash paid for income taxes, net	\$ 1	\$ 571
SUPPLEMENTAL DISCLOSURES OF NONCASH INVESTING AND FINANCING ACTIVITIES:		
Purchases of property, equipment and software recorded in accounts payable and accrued liabilities	\$ 1,398	\$ 3,314
Goodwill measurement period adjustment	\$ -	\$ 146

See notes to condensed consolidated financial statements.

YELP INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. DESCRIPTION OF BUSINESS AND BASIS FOR PRESENTATION

Yelp Inc. was incorporated in Delaware on September 3, 2004. Except where specifically noted or the context otherwise requires, the use of terms such as the “Company” and “Yelp” in these Notes to Condensed Consolidated Financial Statements refers to Yelp Inc. and its subsidiaries.

Yelp connects people with great local businesses by bringing “word of mouth” online and providing a platform for businesses and consumers to engage and transact. Yelp’s platform is transforming the way people discover local businesses; every day, millions of consumers visit its website or use its mobile app to find great local businesses to meet their everyday needs. Businesses of all sizes use the Yelp platform to engage with consumers at the critical moment when they are deciding where to spend their money.

Basis of Presentation

The accompanying interim condensed consolidated financial statements are unaudited. These unaudited interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) and the applicable rules and regulations of the U.S. Securities and Exchange Commission (“SEC”) regarding interim financial reporting. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. Accordingly, these unaudited interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements contained in the Company’s Annual Report on Form 10-K for the year ended December 31, 2016, filed with the SEC on March 1, 2017 (the “Annual Report”). The unaudited condensed consolidated balance sheet as of December 31, 2016 included herein was derived from the audited consolidated financial statements as of that date, but does not include all disclosures required by GAAP, including certain notes to the financial statements.

The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements.

In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all adjustments of a normally recurring nature necessary for the fair presentation of the interim periods presented.

Significant Accounting Policies

There have been no material changes to the Company’s significant accounting policies from those described in the Annual Report.

Recent Accounting Pronouncements Not Yet Effective

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update 2014-09 “Revenue from Contracts with Customers” (“ASU 2014-09”). ASU 2014-09 supersedes the revenue recognition requirements in “Revenue Recognition (Topic 605),” and requires entities to recognize revenue when they transfer promised goods or services to customers, in an amount that reflects the consideration that the entity expects to be entitled to in exchange for such goods or services. As currently issued and amended, ASU 2014-09 is effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. The Company will adopt this standard effective January 1, 2018.

The new standard permits two methods of adoption: retrospectively to each prior reporting period presented (full retrospective method), or retrospectively with the cumulative effect of the initial application of the guidance recognized at the date of adoption (the modified retrospective method). The Company currently anticipates adopting the standard using the full retrospective method and does not anticipate a significant change in revenue recognition from the previous standard. The Company currently expenses contract acquisition costs as incurred and expects that the requirement to defer incremental contract acquisition costs and recognize them over the contract period or expected customer life will result in the recognition of deferred costs on its balance sheets. The Company is still in the process of completing its analysis on the impact this guidance will have on its consolidated financial statements, related disclosures and its internal controls over financial reporting.

In February 2016, FASB issued Accounting Standards Update No. 2016-02, “Leases” (“ASU 2016-02”). The new guidance generally requires an entity to recognize on its balance sheet operating and financing lease liabilities and corresponding right-of-use assets, as well as to recognize the expenses on its statements of operations in a manner similar to that required under current accounting rules. The standard will be effective for the first interim period within annual reporting periods beginning after December 15, 2018 and early adoption is permitted. The new standard requires a modified retrospective transition for existing leases to each prior reporting period presented. The Company is currently evaluating the impact of the adoption of ASU 2016-02 on its consolidated financial statements.

In August 2016, FASB issued Accounting Standards Update No. 2016-15, “Statement of Cash Flows (Subtopic 230)” (“ASU 2016-15”). The new guidance provides clarity around the cash flow classification for specific issues in an effort to reduce the current and potential future diversity in practice. The standard will be effective for the first interim period within annual reporting periods beginning after December 15, 2017 and early adoption is permitted. The Company is currently evaluating the impact of the adoption of ASU 2016-15 on its consolidated financial statements and anticipates adopting this standard for the first interim period within the annual reporting period beginning after December 15, 2017.

In November 2016, FASB issued Accounting Standards Update No. 2016-18, “Statement of Cash Flows (Subtopic 230)” (“ASU 2016-18”). The new guidance requires that the statement of cash flows explain the change during the period in the total of cash, cash equivalents and amounts generally described as restricted cash or restricted cash equivalents. The standard will be effective for the first interim period within annual reporting periods beginning after December 15, 2017 and early adoption is permitted. The Company is currently evaluating the impact of the adoption of ASU 2016-18 on its consolidated financial statements and anticipates adopting this standard for the first interim period within the annual reporting period beginning after December 15, 2017.

In January 2017, FASB issued Accounting Standards Update No. 2017-04, “Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment” (“ASU 2017-04”). This new guidance simplifies the subsequent measurement of goodwill by eliminating Step 2 from the goodwill impairment test. Entities will now perform goodwill impairment tests by comparing fair value of a reporting unit with its carrying amount and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit’s fair value. The standard will be effective for the first interim period within annual reporting periods beginning after December 15, 2019 and early adoption is permitted. The Company is currently evaluating the impact and timing of the adoption of ASU 2017-04, but expects that it will not have a material impact on its consolidated financial statements.

Principles of Consolidation

These unaudited interim condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated upon consolidation.

Use of Estimates

The preparation of the Company’s unaudited interim condensed consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of income and expenses during the reporting period. These estimates are based on information available as of the date of the condensed consolidated financial statements; therefore, actual results could differ from management’s estimates.

2. CASH AND CASH EQUIVALENTS

Cash and cash equivalents as of June 30, 2017 and December 31, 2016 consisted of the following (in thousands):

	June 30, 2017	December 31, 2016
Cash and cash equivalents		
Cash	\$ 150,613	\$ 119,778
Cash equivalents	169,141	152,423
Total cash and cash equivalents	<u>\$ 319,754</u>	<u>\$ 272,201</u>

The lease agreements for certain of the Company’s offices require the Company to maintain letters of credit issued to the landlords of each facility. Each letter of credit is subject to renewal annually until the applicable lease expires and is collateralized by restricted cash. As of June 30, 2017 and December 31, 2016, the Company had letters of credit totaling \$18.5 million and \$17.3 million, respectively, which primarily related to such leases, and which are included in restricted cash.

3. FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company's investments in money market accounts are recorded as cash equivalents at fair value in the condensed consolidated financial statements. All other financial instruments are classified as held-to-maturity investments and, accordingly, are recorded at amortized cost; however, the Company is required to determine the fair value of these investments on a recurring basis to identify any potential impairment. The accounting guidance for fair value measurements prioritizes the inputs used in measuring fair value in the following hierarchy:

Level 1 —Observable inputs, such as quoted prices in active markets,

Level 2 —Inputs other than quoted prices in active markets that are observable either directly or indirectly, or

Level 3 —Unobservable inputs in which there are little or no market data, which require the Company to develop its own assumptions.

This hierarchy requires the Company to use observable market data, when available, to minimize the use of unobservable inputs when determining fair value. The Company's money market funds are classified within Level 1 of the fair value hierarchy because they are valued using quoted prices in active markets. The Company's commercial paper, corporate bonds, agency bonds and agency discount notes are classified within Level 2 of the fair value hierarchy because they have been valued using inputs other than quoted prices in active markets that are observable directly or indirectly.

The following table represents the Company's financial instruments measured at fair value as of June 30, 2017 and December 31, 2016 (in thousands):

	June 30, 2017				December 31, 2016			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Cash Equivalents:								
Money market funds	\$ 146,195	\$ -	\$ -	\$ 146,195	\$ 152,423	\$ -	\$ -	\$ 152,423
Commercial paper	-	17,955	-	17,955	-	-	-	-
Agency discount notes	-	4,991	-	4,991	-	-	-	-
Marketable Securities:								
Agency bonds	-	149,980	-	149,980	-	152,394	-	152,394
Commercial paper	-	31,909	-	31,909	-	45,894	-	45,894
Corporate bonds	-	9,990	-	9,990	-	9,006	-	9,006
Total cash equivalents and marketable securities	\$ 146,195	\$ 214,825	\$ -	\$ 361,020	\$ 152,423	\$ 207,294	\$ -	\$ 359,717

4. MARKETABLE SECURITIES

The amortized cost, gross unrealized gains and losses, and fair value of securities held-to-maturity, all of which mature within one year, as of June 30, 2017 and December 31, 2016 were as follows (in thousands):

	As of June 30, 2017			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Short-term marketable securities:				
Agency bonds	\$ 150,135	\$ -	\$ (155)	\$ 149,980
Commercial paper	31,909	-	-	31,909
Corporate bonds	9,997	-	(7)	9,990
Total marketable securities	\$ 192,041	\$ -	\$ (162)	\$ 191,879

	As of December 31, 2016			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Short-term marketable securities:				
Agency bonds	\$ 152,429	\$ 18	\$ (53)	\$ 152,394
Commercial paper	45,894	-	-	45,894
Corporate bonds	9,009	-	(3)	9,006
Total marketable securities	\$ 207,332	\$ 18	\$ (56)	\$ 207,294

The following tables present gross unrealized losses and fair values for those securities that were in an unrealized loss position as of June 30, 2017 and December 31, 2016, aggregated by investment category and the length of time that the individual securities have been in a continuous loss position (in thousands):

	As of June 30, 2017					
	Less Than 12 Months		12 Months or Greater		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
Agency bonds	\$ 149,980	\$ (155)	\$ -	\$ -	\$ 149,980	\$ (155)
Corporate bonds	9,990	(7)	-	-	9,990	(7)
Total	\$ 159,970	\$ (162)	\$ -	\$ -	\$ 159,970	\$ (162)

	As of December 31, 2016					
	Less Than 12 Months		12 Months or Greater		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
Agency bonds	\$ 92,018	\$ (53)	\$ -	\$ -	\$ 92,018	\$ (53)
Corporate bonds	8,006	(3)	-	-	8,006	(3)
Total	\$ 100,024	\$ (56)	\$ -	\$ -	\$ 100,024	\$ (56)

The Company periodically reviews its investment portfolio for other-than-temporary impairment. The Company considers such factors as the duration, severity and reason for the decline in value, and the potential recovery period. The Company also considers whether it is more likely than not that it will be required to sell the securities before the recovery of their amortized cost basis, and whether the amortized cost basis cannot be recovered as a result of credit losses. During the three and six months ended June 30, 2017 and 2016, the Company did not recognize any other-than-temporary impairment loss.

5. PROPERTY, EQUIPMENT AND SOFTWARE, NET

Property, equipment and software, net as of June 30, 2017 and December 31, 2016 consisted of the following (in thousands):

	June 30, 2017	December 31, 2016
Capitalized website and internal-use software development costs	\$ 72,532	\$ 61,515
Leasehold improvements	61,385	60,101
Computer equipment	30,620	28,551
Furniture and fixtures	14,765	14,162
Telecommunication	3,655	3,457
Software	1,190	1,079
Total	184,147	168,865
Less accumulated depreciation	(92,433)	(76,425)
Property, equipment and software, net	\$ 91,714	\$ 92,440

Depreciation expense was approximately \$8.3 million and \$6.8 million for the three months ended June 30, 2017 and 2016, respectively, and approximately \$16.5 million and \$13.3 million for the six months ended June 30, 2017 and 2016, respectively.

6. INTANGIBLE ASSETS AND GOODWILL

The Company's goodwill is the result of its acquisitions of other businesses, and represents the excess of purchase consideration over the fair value of assets and liabilities acquired. The Company performed its annual goodwill impairment analysis during the three months ended September 30, 2016 and concluded that goodwill was not impaired, as the fair value of each reporting unit exceeded its carrying value.

The changes in carrying amount of goodwill during the six months ended June 30, 2017 were as follows (in thousands):

Balance as of December 31, 2016	\$ 170,667
Additions upon business combinations	42,007
Effect of currency translation	3,766
Balance as of June 30, 2017	<u>\$ 216,440</u>

Intangible assets at June 30, 2017 and December 31, 2016 consisted of the following (dollars in thousands):

	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Remaining Life	
June 30, 2017:					
Business relationships	\$ 27,287	\$ (3,876)	\$ 23,411	10.2	years
Developed technology	15,083	(4,909)	10,174	3.9	years
User relationships	12,142	(4,111)	8,031	4.6	years
Content	3,863	(3,186)	677	1.8	years
Trademarks	3,788	(1,884)	1,904	2.1	years
Domains and data licenses	2,804	(1,590)	1,214	2.5	years
Total	\$ 64,967	\$ (19,556)	\$ 45,411		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Remaining Life	
December 31, 2016:					
Business relationships	\$ 17,400	\$ (2,741)	\$ 14,659	10.1	years
Developed technology	9,280	(4,122)	5,158	3.1	years
User relationships	12,000	(3,240)	8,760	5.1	years
Content	3,674	(2,581)	1,093	2.0	years
Trademarks	3,338	(1,861)	1,477	2.1	years
Domains and data licenses	2,804	(1,340)	1,464	3.0	years
Advertiser relationships	1,549	(1,549)	-	0.0	years
Total	\$ 50,045	\$ (17,434)	\$ 32,611		

Amortization expense was \$2.3 million and \$1.7 million for the three months ended June 30, 2017 and 2016, respectively, and \$4.3 million and \$3.4 million for the six months ended June 30, 2017 and 2016, respectively.

As of June 30, 2017, the estimated future amortization of purchased intangible assets for (i) the remaining six months of 2017, (ii) each of the succeeding four years, and (iii) thereafter is as follows (in thousands):

Year Ending December 31,	Amount
2017 (from July 1, 2017)	\$ 4,590
2018	8,826
2019	7,947
2020	5,682
2021	5,376
Thereafter	12,990
Total amortization	<u>\$ 45,411</u>

7. ACQUISITIONS

Nowait, Inc.

On February 28, 2017, the Company acquired Nowait, Inc. (“Nowait”). In connection with the acquisition, all outstanding capital stock and warrants to purchase capital stock of Nowait — including the 20% equity investment in Nowait the Company acquired in July 2016 (see Note 8) — were converted into the right to receive an aggregate of approximately \$40 million in cash. Of the total amount of consideration paid in connection with the acquisition, \$8 million is being held in escrow for a two-year period after the closing to secure the Company’s indemnification rights. The key purpose underlying the acquisition was to secure waitlist system and seating tool technology. The Company utilized an income approach to determine the valuation of the Company’s existing equity investment in Nowait as of the acquisition date. The carrying value of the Company’s investment approximated its fair value.

The acquisition was accounted for as a business combination in accordance with Accounting Standards Codification Topic 805, “Business Combinations” (“ASC 805”), with the results of Nowait’s operations included in the Company’s consolidated financial statements from February 28, 2017. The Company’s allocation of the purchase price is preliminary as the amounts related to identifiable intangible assets and the effects of any net working capital adjustments are still being finalized. Any material measurement period adjustments will be recorded retroactively to the acquisition date. The purchase price allocation, subject to finalization during the measurement period, is as follows (in thousands):

	February 28, 2017
Fair value of purchase consideration	
Cash:	
Distributed to Nowait stockholders	\$ 31,892
Held in escrow account	7,945
Total purchase consideration	<u>39,837</u>
Fair value of net assets acquired:	
Cash and cash equivalents	\$ 1,004
Intangible assets	12,670
Goodwill	25,959
Other assets	1,065
Total assets acquired	<u>40,698</u>
Liabilities assumed	(861)
Total liabilities assumed	<u>(861)</u>
Net assets acquired	<u>\$ 39,837</u>

Estimated useful lives and the amount assigned to each class of intangible assets acquired are as follows:

Intangible Asset Type	Amount Assigned	Useful Life
Enterprise restaurant relationships	\$ 8,500	12.0 years
Acquired technology	2,900	5.0 years
Trademarks	610	3.0 years
Local restaurant relationships	600	5.0 years
User relationships	60	3.0 years
Weighted average		9.6 years

The intangible assets are being amortized on a straight-line basis, which reflects the pattern in which the economic benefits of the intangible assets are being utilized. The goodwill results from the Company's opportunity to drive daily engagement in its key restaurant vertical by allowing consumers to move more quickly from search and discovery to transacting at a local business. None of the goodwill is deductible for tax purposes.

For the three months ended June 30, 2017, the Company recorded no acquisition-related transaction costs and for the six months ended June 30, 2017, the Company recorded acquisition-related transaction costs of approximately \$0.1 million, which were included in general and administrative expenses in the accompanying condensed consolidated statement of operations.

The condensed consolidated statements of operations for the three and six months ended June 30, 2017 include \$1.1 million and \$1.3 million of revenue attributable to Nowait, respectively, and \$2.4 million and \$3.2 million of net loss attributable to Nowait, respectively.

Turnstyle Analytics Inc.

On April 3, 2017, the Company acquired all of the equity interests in Turnstyle Analytics Inc. ("Turnstyle") for approximately \$21 million, of which approximately \$1 million represents compensation cost due to a continuous service requirement and the remainder represents purchase consideration. Of the total consideration paid in connection with the acquisition, \$3 million is being held in escrow for an 18-month period after the closing to secure the Company's indemnification rights. The key factor underlying the acquisition was to obtain a customer retention and loyalty product in the form of a location-based marketing and analytics platform that provides Wi-Fi as a digital marketing tool to expand its product offerings for local businesses.

The acquisition was accounted for as a business combination in accordance with ASC 805, with the results of Turnstyle's operations included in the Company's consolidated financial statements from April 3, 2017. The Company's allocation of the purchase price is preliminary as the amounts related to identifiable intangible assets and the effects of any net working capital adjustments are still being finalized. Any material measurement period adjustments will be recorded retroactively to the acquisition date. The purchase price allocation, subject to finalization during the measurement period, is as follows (in thousands):

	April 3, 2017
Fair value of purchase consideration	
Cash:	
Distributed to Turnstyle stockholders	\$ 16,648
Held in escrow account	3,093
Total purchase consideration	\$ 19,741
Fair value of net assets acquired:	
Cash and cash equivalents	\$ 30
Intangible assets	4,252
Goodwill	16,048
Other assets	250
Total assets acquired	20,580
Deferred tax liability	(450)
Liabilities assumed	(389)
Total liabilities assumed	(839)
Net assets acquired	\$ 19,741

Estimated useful lives and the amount assigned to each class of intangible assets acquired are as follows:

Intangible Asset Type	Amount Assigned	Useful Life
Acquired technology	\$ 3,250	5.0 years
Business relationships	672	5.0 years
Trademarks	250	3.0 years
User relationships	80	3.0 years
Weighted average		4.9 years

The intangible assets are being amortized on a straight-line basis, which reflects the pattern in which the economic benefits of the intangible assets are being utilized. The goodwill results from the Company's opportunity to expand its product offerings to local businesses through the Turnstyle marketing and analytics platform. None of the goodwill is deductible for tax purposes.

For the three months ended June 30, 2017, the Company recorded acquisition-related transaction costs of approximately \$0.3 million, which were included in general and administrative expenses in the accompanying condensed consolidated statement of operations.

Following the acquisition date, \$0.4 million of revenue and \$0.6 million of net loss attributable to Turnstyle was included in the condensed consolidated statement of operations for the three months ended June 30, 2017.

Pro Forma Financial Information

The unaudited pro forma financial information in the tables below summarizes the combined results of operations for (a) the Company and Nowait, (b) the Company and Turnstyle and (c) the Company with Nowait and Turnstyle, as though the respective combinations had occurred as of January 1, 2016, and includes the accounting effects resulting from the acquisitions, including amortization charges from acquired intangible assets and changes in depreciation due to differing asset values and depreciation lives.

The unaudited pro forma financial information, as presented below, is for informational purposes only and is not necessarily indicative of the results of operations that would have been achieved if the combinations had taken place as of January 1, 2016 (in thousands, except per share data):

2017 Acquisitions

Nowait, Inc

	Pro Forma			
	Three Months Ended		Six Months Ended	
	June 30		June 30	
	2017	2016	2017	2016
Net revenue	\$ 208,864	\$ 174,533	\$ 406,961	\$ 334,108
Net income (loss)	7,590	(2,339)	1,768	(19,413)
Basic net income (loss) per share attributable to common stockholders	0.09	(0.03)	0.02	(0.25)
Diluted net income (loss) per share attributable to common stockholders	0.09	(0.03)	0.02	(0.25)

Turnstyle Analytics Inc

	Pro Forma			
	Three Months Ended		Six Months Ended	
	June 30		June 30	
	2017	2016	2017	2016
Net revenue	\$ 208,864	\$ 173,618	\$ 406,514	\$ 332,492
Net income (loss)	7,590	(186)	2,664	(15,937)
Basic net income (loss) per share attributable to common stockholders	0.09	-	0.03	(0.21)
Diluted net income (loss) per share attributable to common stockholders	0.09	-	0.03	(0.21)

Combined

	Pro Forma			
	Three Months Ended		Six Months Ended	
	June 30		June 30	
	2017	2016	2017	2016
Net revenue	\$ 208,864	\$ 174,722	\$ 407,288	\$ 334,558
Net income (loss)	7,590	(2,974)	1,622	(20,347)
Basic net income (loss) per share attributable to common stockholders	0.09	(0.04)	0.02	(0.27)
Diluted net income (loss) per share attributable to common stockholders	0.09	(0.04)	0.02	(0.27)

8. OTHER NON-CURRENT ASSETS

Other non-current assets as of June 30, 2017 and December 31, 2016 consisted of the following (in thousands):

	June 30, 2017	December 31, 2016
Cost-method investments	\$ -	\$ 8,000
Other	3,140	2,992
Total other non-current assets	\$ 3,140	\$ 10,992

Cost-method investments represent the Company's investment in the preferred stock of Nowait, which was completed on July 15, 2016. The Company acquired the entirety of Nowait on February 28, 2017 and its original investment of \$8.0 million was returned to it in the three months ended March 31, 2017 in connection with the acquisition. The remaining other non-current assets are primarily deferred tax assets.

9. ACCRUED LIABILITIES

Accrued liabilities as of June 30, 2017 and December 31, 2016 consisted of the following (in thousands):

	June 30, 2017	December 31, 2016
Accrued compensation and related	\$ 17,675	\$ 12,892
Accrued marketing	5,557	4,633
Accrued tax liabilities	4,983	5,456
Other accrued expenses	12,721	13,749
Total	<u>\$ 40,936</u>	<u>\$ 36,730</u>

10. LONG-TERM LIABILITIES

Long-term liabilities as of June 30, 2017 and December 31, 2016 consisted of the following (in thousands):

	June 30, 2017	December 31, 2016
Deferred rent	\$ 16,812	\$ 16,896
Other long-term liabilities	1,508	725
Total long-term liabilities	<u>\$ 18,320</u>	<u>\$ 17,621</u>

Other long-term liabilities primarily comprise deferred tax liabilities.

11. COMMITMENTS AND CONTINGENCIES

Office Facility Leases —The Company leases its office facilities under operating lease agreements that expire from 2017 to 2025. Certain lease agreements provide for rental payments on a graduated basis. The Company recognizes rent expense on a straight-line basis over the lease period. Rental expense was \$9.9 million and \$9.1 million for the three months ended June 30, 2017 and 2016, respectively, and \$19.7 million and \$17.6 million for the six months ended June 30, 2017 and 2016, respectively.

The Company has subleased certain office facilities under operating lease agreements that expire in 2021. The Company recognizes sublease rentals as a reduction in rental expense on a straight-line basis over the lease period. Sublease rental income was \$0.5 million and \$0.5 million for the three months ended June 30, 2017 and 2016, respectively, and \$1.0 million and \$1.0 million for the six months ended June 30, 2017 and 2016, respectively.

Legal Proceedings —The Company is subject to legal proceedings arising in the ordinary course of business. Although the results of litigation and claims cannot be predicted with certainty, the Company currently does not believe that the final outcome of any of these matters will have a material adverse effect on the Company's business, financial position, results of operations or cash flows.

In August 2014, two putative class action lawsuits alleging violations of federal securities laws were filed in the U.S. District Court for the Northern District of California, naming as defendants the Company and certain of its officers. The lawsuits allege violations of the Exchange Act by the Company and certain of its officers for allegedly making materially false and misleading statements regarding the Company's business and operations between October 29, 2013 and April 3, 2014. These cases were subsequently consolidated and, in January 2015, the plaintiffs filed a consolidated complaint seeking unspecified monetary damages and other relief. Following the court's dismissal of the consolidated complaint on April 21, 2015, the plaintiffs filed a first amended complaint on May 21, 2015. On November 24, 2015, the court dismissed the first amended complaint with prejudice, and entered judgment in the Company's favor on December 28, 2015. The plaintiffs have appealed this decision to the U.S. Court of Appeals for the Ninth Circuit, and a hearing has been scheduled for September 11, 2017.

On April 23, 2015, a putative class action lawsuit was filed by former Eat24 Hours.com, Inc. ("Eat24") employees in the Superior Court of California for San Francisco County, naming as defendants the Company and Eat24. The lawsuit asserts that the defendants failed to permit meal and rest periods for certain current and former employees working as Eat24 customer support specialists, and alleges violations of the California Labor Code, applicable Industrial Welfare Commission Wage Orders and the California Business and Professions Code. The plaintiffs seek monetary damages in an unspecified amount and injunctive relief. On May 29, 2015, plaintiffs filed a first amended complaint asserting an additional cause of action for penalties under the Private Attorneys General Act. In January 2016, the Company reached a preliminary agreement to settle this matter, which the court preliminarily approved on June 27, 2016. The settlement received final court approval on December 5, 2016 and the \$0.6 million settlement amount was paid on February 8, 2017.

On June 24, 2015, a former Eat24 sales employee filed a lawsuit, on behalf of herself and a putative class of current and former Eat24 sales employees, against Eat24 in the Superior Court of California for San Francisco County. The lawsuit alleges that Eat24 failed to pay required wages, including overtime wages, allow meal and rest periods and maintain proper records, and asserts causes of action under the California Labor Code, applicable Industrial Welfare Commission Wage Orders and the California Business and Professions Code. The plaintiff seeks monetary damages and penalties in unspecified amounts, as well as injunctive relief. On August 3, 2015, the plaintiff filed a first amended complaint asserting an additional cause of action for penalties under the Private Attorneys General Act. In January 2016, the Company reached a preliminary agreement to settle this matter, which the court preliminarily approved on August 29, 2016. The settlement received final court approval on February 1, 2017 and the \$0.2 million settlement amount was paid on March 29, 2017.

Indemnification Agreements —In the ordinary course of business, the Company may provide indemnifications of varying scope and terms to customers, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, services to be provided by the Company or from intellectual property infringement claims made by third parties. In addition, the Company has entered into indemnification agreements with directors and certain officers and employees that will require the Company to, among other things, indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees.

While the outcome of claims cannot be predicted with certainty, the Company does not believe that the outcome of any claims under the indemnification arrangements will have a material effect on the Company's financial position, results of operations or cash flows.

Payroll Tax Audit —In June 2015, the U.S. Internal Revenue Service ("IRS") began a payroll tax audit of the Company for 2013 and 2014. The Company has assessed the estimated range of such loss and, as of June 30, 2017, a liability of \$0.5 million has been recorded. The Company expects the audits and any related assessments to be finalized in 2017.

12. STOCKHOLDERS' EQUITY

Elimination of Dual-Class Common Stock Structure

On September 22, 2016, all outstanding shares of the Company's Class A common stock and Class B common stock automatically converted into a single class of common stock (the "Conversion") pursuant to the terms of the Company's Amended and Restated Certificate of Incorporation. On September 23, 2016, the Company filed a certificate with the Secretary of State of the State of Delaware effecting the retirement and cancellation of the Class A common stock and Class B common stock. This certificate of retirement had the additional effect of eliminating the authorized Class A and Class B shares, thereby reducing the Company's total number of authorized shares of common stock from 500,000,000 to 200,000,000.

The following table presents the number of shares authorized and issued and outstanding as of the dates indicated:

	June 30, 2017		December 31, 2016	
	Shares Authorized	Shares Issued and Outstanding	Shares Authorized	Shares Issued and Outstanding
Stockholders' equity:				
Common stock, \$0.000001 par value	200,000,000	81,752,997	200,000,000	79,429,833
Undesignated Preferred Stock	10,000,000	-	10,000,000	-

Equity Incentive Plans

The Company has outstanding awards under three equity incentive plans: the Amended and Restated 2005 Equity Incentive Plan (the "2005 Plan"), the 2011 Equity Incentive Plan (the "2011 Plan") and the 2012 Equity Incentive Plan, as amended (the "2012 Plan"). In July 2011, the Company adopted the 2011 Plan, terminated the 2005 Plan and provided that no further stock awards were to be granted under the 2005 Plan. All outstanding stock awards under the 2005 Plan continue to be governed by their existing terms. Upon the effectiveness of the underwriting agreement in connection with the Company's initial public offering ("IPO"), the Company terminated the 2011 Plan and all shares that were reserved under the 2011 Plan but not issued were assumed by the 2012 Plan. No further awards will be granted pursuant to the 2011 Plan. All outstanding stock awards under the 2011 Plan continue to be governed by their existing terms. Under the 2012 Plan, the Company has the ability to issue incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock units ("RSUs"), restricted stock awards ("RSAs"), performance units and performance shares. Additionally, the 2012 Plan provides for the grant of performance cash awards to employees, directors and consultants.

Stock Options

Stock options granted under the 2012 Plan are granted at a price per share not less than the fair value of a share of the Company's common stock at date of grant. Options granted to date generally vest over a four-year period, on one of four schedules: (a) 25% vesting at the end of one year and the remaining shares vesting monthly thereafter; (b) 10% vesting over the first year, 20% vesting over the second year, 30% vesting over the third year and 40% vesting over the fourth year; (c) ratably on a monthly basis; or (d) 35% vesting over the first year, 40% vesting over the second year and 25% vesting over the third year. Options granted are generally exercisable for up to 10 years. The Company issues new shares when stock options are exercised.

A summary of stock option activity for the six months ended June 30, 2017 is as follows:

	Options Outstanding		Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
	Number of Shares	Weighted-Average Exercise Price		
Outstanding - December 31, 2016	8,018,941	\$ 21.71	6.10	\$ 147,673
Granted	850,850	34.97		
Exercised	(719,643)	19.36		
Canceled	(115,914)	48.60		
Outstanding - June 30, 2017	8,034,234	\$ 22.94	6.02	\$ 83,542
Options vested and exercisable as of June 30, 2017	6,215,474	\$ 20.07	5.16	\$ 77,961

Aggregate intrinsic value represents the difference between the closing price of the Company's common stock on a given date and the exercise price of outstanding, in-the-money options. The total intrinsic value of options exercised was approximately \$5.5 million and \$3.2 million for the three months ended June 30, 2017 and 2016, respectively, and \$10.4 million and \$4.8 million for the six months ended June 30, 2017 and 2016, respectively.

The weighted-average grant date fair value of options granted was \$14.61 and \$9.18 per share for the three months ended June 30, 2017 and 2016, respectively, and \$15.52 and \$9.42 per share for the six months ended June 30, 2017 and 2016, respectively.

As of June 30, 2017, total unrecognized compensation costs related to unvested stock options was approximately \$24.6 million, which is expected to be recognized over a weighted-average time period of 2.6 years.

RSUs

The cost of RSUs is determined using the fair value of the Company's common stock on the date of grant. RSUs generally vest over a four-year period, on one of three schedules: (a) 25% vesting at the end of one year and the remaining vesting quarterly or annually thereafter; (b) 10% vesting over the first year, 20% vesting over the second year, 30% vesting over the third year and 40% vesting over the fourth year; or (c) ratably on a quarterly basis.

A summary of RSU activity for the six months ended June 30, 2017 is as follows:

	Restricted Stock Units	
	Number of Shares	Weighted- Average Grant Date Fair Value
Unvested - December 31, 2016	7,090,465	\$ 32.43
Granted	2,540,323	35.93
Released	(1,375,885)	33.12
Canceled	(729,628)	33.27
Unvested - June 30, 2017	7,525,275	\$ 33.40

As of June 30, 2017, the Company had approximately \$232.5 million of unrecognized stock-based compensation expense related to RSUs, which is expected to be recognized over the remaining weighted-average vesting period of approximately 2.82 years.

Employee Stock Purchase Plan

The ESPP allows eligible employees to purchase shares of the Company's common stock at a discount through payroll deductions of up to 15% of their eligible compensation, subject to any plan limitations, during designated offering periods. At the end of each offering period, employees are able to purchase shares at 85% of the fair market value of the Company's common stock on the last day of the offering period.

There were 228,299 shares purchased by employees under the ESPP at a weighted-average purchase price of \$23.73 per share during the three and six months ended June 30, 2017. There were 200,953 shares purchased by employees under the ESPP at a weighted-average purchase price of \$22.26 per share during the three and six months ended June 30, 2016. The Company recognized \$0.5 million and \$0.5 million of stock-based compensation expense related to the ESPP in the three months ended June 30, 2017 and 2016, respectively, and \$1.0 million and \$0.7 million in the six months ended June 30, 2017 and 2016, respectively.

Stock-Based Compensation

The following table summarizes the effects of stock-based compensation expense related to stock-based awards in the condensed consolidated statements of operations during the periods presented (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Cost of revenue	\$ 957	\$ 407	\$ 1,938	\$ 808
Sales and marketing	7,261	6,843	14,129	13,185
Product development	11,245	8,413	22,453	16,443
General and administrative	5,902	5,063	11,179	9,400
Total stock-based compensation	\$ 25,365	\$ 20,726	\$ 49,699	\$ 39,836

The Company capitalized \$1.7 million and \$1.2 million of stock-based compensation expense as website development costs in the three months ended June 30, 2017 and 2016, respectively, and \$3.0 million and \$2.0 million in the six months ended June 30, 2017 and 2016, respectively.

13. OTHER INCOME, NET

Other income, net for the three and six months ended June 30, 2017 and 2016 consisted of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Interest income, net	\$ 794	\$ 414	\$ 1,440	\$ 725
Transaction gain (loss) on foreign exchange	39	(39)	54	27
Other non-operating income (loss), net	31	(8)	100	(127)
Other income, net	<u>\$ 864</u>	<u>\$ 367</u>	<u>\$ 1,594</u>	<u>\$ 625</u>

14. INCOME TAXES

The Company is subject to income tax in the United States as well as other tax jurisdictions in which it conducts business. Earnings from non-U.S. activities are subject to local country income tax. The Company recorded an income tax provision of \$0.1 million and an income tax benefit of \$1.3 million for the three months ended June 30, 2017 and 2016, respectively, and an income tax provision of \$0.2 million for each of the six months ended June 30, 2017 and 2016. The tax provision for the six months ended June 30, 2017 is due to \$0.1 million in U.S. state and foreign income tax expense and \$0.1 million of discrete income tax expense. The tax provision for the six months ended June 30, 2016 is due to \$0.1 million in U.S. federal and state and foreign income tax provision and \$0.1 million of discrete expense.

Accounting for income taxes for interim periods generally requires the provision for income taxes to be determined by applying an estimate of the annual effective tax rate for the full fiscal year to “ordinary” income or loss (pretax income or loss excluding unusual or infrequently occurring discrete items) for the reporting period. For the three and six months ended June 30, 2017, a discrete effective tax rate method was used in jurisdictions where a small change in estimated ordinary income has a significant impact on the annual effective tax rate. The primary difference between the effective tax rate and the federal statutory tax rate relates to the valuation allowances on certain of the Company’s net operating losses, foreign tax rate differences, meals and entertainment, tax credits, and stock-based compensation expense. Jurisdictions where no benefit is recorded on forecasted losses were excluded from the consolidated effective tax rate. As of June 30, 2017, the total amount of gross unrecognized tax benefits was \$12.3 million, \$11.5 million of which is subject to a full valuation allowance and would not affect the Company’s effective tax rate if recognized. As of June 30, 2017, the Company had an immaterial amount related to the accrual of interest and penalties. During the three and six months ended June 30, 2017, the Company’s gross unrecognized tax benefits increased by \$0.8 million and \$2.0 million, respectively, an immaterial amount of which would affect the Company’s effective tax rate if recognized.

In addition, the Company is subject to the continuous examination of its income tax returns by the IRS and other tax authorities. The Company’s federal and state income tax returns for fiscal years subsequent to 2003 remain open to examination. In the Company’s most significant foreign jurisdictions — Canada, Ireland, the United Kingdom and Germany — the tax years subsequent to 2010 remain open to examination. The Company regularly assesses the likelihood of adverse outcomes resulting from examinations to determine the adequacy of its provision for income taxes, and monitors the progress of ongoing discussions with tax authorities and the impact, if any, of the expected expiration of the statute of limitations in various taxing jurisdictions. The Company believes that an adequate provision has been made for any adjustments that may result from tax examinations. However, the outcome of tax audits cannot be predicted with certainty. If any issues addressed in the Company’s tax audits are resolved in a manner not consistent with management’s expectations, the Company could be required to adjust its provision for income taxes in the period such resolution occurs. Although the timing of the resolution or closure of audits is not certain, the Company believes it is reasonably possible that its unrecognized tax benefits could be reduced by an immaterial amount over the 12 months following December 31, 2016.

It is the intention of the Company to permanently reinvest the earnings from 10036773 Canada Inc., Turnstyle Analytics, Inc., Darwin Social Marketing Inc., Yelp UK Ltd. and Yelp Ireland Holding Company Limited and its subsidiaries. The Company does not provide for U.S. income taxes of foreign subsidiaries as such earnings are to be reinvested indefinitely. As of June 30, 2017, the Company estimates \$2.5 million of cumulative foreign earnings upon which U.S. income taxes have not been provided.

15. NET INCOME (LOSS) PER SHARE

Basic and diluted net loss per share attributable to common stockholders for periods prior to the Conversion are presented in conformity with the “two-class method” required for participating securities. Prior to the Conversion, shares of Class A and Class B common stock were the only outstanding equity in the Company. The rights of the holders of Class A and Class B common stock were identical, except with respect to voting and conversion. Each share of Class A common stock was entitled to one vote per share and each share of Class B common stock was entitled to ten votes per share. Shares of Class B common stock were convertible into Class A common stock at any time at the option of the stockholder, and were automatically converted upon sale or transfer to Class A common stock, subject to certain limited exceptions, and in connection with certain other conversion events.

Under the two-class method, basic net loss per share is computed using the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is computed using the weighted-average number of shares of common stock and, if dilutive, potential shares of common stock outstanding during the period. The Company's potential shares of common stock consist of the incremental shares of common stock issuable upon the exercise of stock options, shares issuable upon the vesting of RSUs and, to a lesser extent, unvested shares subject to RSAs and purchases related to the ESPP. The dilutive effect of these potential shares of common stock is reflected in diluted earnings per share by application of the treasury stock method. The computation of the diluted net loss per share of Class A common stock assumes the conversion of Class B common stock, while the diluted net loss per share of Class B common stock does not assume the conversion of Class B common stock.

The undistributed earnings are allocated based on the contractual participation rights of the Class A and Class B common stock as if the earnings for the year have been distributed. As the liquidation and dividend rights are identical, the undistributed earnings are allocated on a proportionate basis. Further, as the conversion of Class B common stock is assumed in the computation of the diluted net loss per share of Class A common stock, the undistributed earnings are equal to net loss for that computation.

On September 22, 2016, the Company's Class A and Class B common stock converted into a single class of common stock. Because shares of Class A and Class B common stock were outstanding during the three and six months ended June 30, 2016, the Company has disclosed earnings per common share for both classes of common stock for those reporting periods. Basic and diluted net loss per share attributable to common stockholders for periods after the Conversion, including the current reporting period, are presented based on the number of shares of common stock outstanding.

The following table presents the calculation of basic and diluted net income (loss) per share (in thousands, except per share data):

	Three Months Ended June 30,		
	2017	2016	
	Common stock	Class A	Class B
Net income attributable to common stockholders	\$ 7,590	\$ 399	\$ 50
Basic Shares:			
Weighted-average shares outstanding	80,996	68,018	8,449
Net income per share attributable to common stockholders Basic:	\$ 0.09	\$ 0.01	\$ 0.01

	Three Months Ended June 30,		
	2017	2016	
	Common stock	Class A	Class B
Diluted net income per share attributable to common stockholders:			
Numerator:			
Allocation of undistributed earnings for basic computation	\$ 7,590	\$ 399	\$ 50
Reallocation of undistributed earnings as a result of conversion of Class B to Class A shares	-	50	-
Reallocation of undistributed earnings to Class B shares	-	-	7
Allocation of undistributed earnings	\$ 7,590	\$ 449	\$ 57
Denominator:			
Number of shares used in basic calculation	80,996	68,018	8,449
Weighted-average effect of dilutive securities Conversion of Class B to Class A shares	-	8,449	-
Stock options	2,807	2,106	1,591
Restricted stock units	1,057	398	-
Contingently issuable shares	-	309	-
Number of shares used in diluted calculation	84,860	79,280	10,040
Diluted net income per share attributable to common stockholders	\$ 0.09	\$ 0.01	\$ 0.01

	Six Months Ended June 30,		
	2017	2016	
	Common stock	Class A	Class B
Net income (loss) attributable to common stockholders	\$ 2,810	\$ (13,303)	\$ (1,700)
Basic Shares:			
Weighted-average shares outstanding	80,422	67,542	8,634
Net income (loss) per share attributable to common stockholders Basic:	\$ 0.03	\$ (0.20)	\$ (0.20)

	Six Months Ended June 30,		
	2017	2016	
	Common stock	Class A	Class B
Diluted net income (loss) per share attributable to common stockholders:			
Numerator:			
Allocation of undistributed earnings (losses)	\$ 2,810	\$ (13,303)	\$ (1,700)
Denominator:			
Number of shares used in basic calculation	80,422	68,018	8,449
Weighted-average effect of dilutive securities			
Stock options	3,132	-	-
Restricted stock units	1,578	-	-
Number of shares used in diluted calculation	85,132	68,018	8,449
Diluted net income (loss) per share attributable to common stockholders	\$ 0.03	\$ (0.20)	\$ (0.20)

The following weighted-average stock-based instruments were excluded from the calculation of diluted net loss per share because their effect would have been anti-dilutive for the periods presented (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Stock options	2,197	3,385	1,974	8,953
Restricted stock units and awards	3,657	3,582	2,418	6,445
Contingently issuable shares	-	-	-	309

16. INFORMATION ABOUT REVENUE AND GEOGRAPHIC AREAS

The Company considers operating segments to be components of the Company in which separate financial information is available that is evaluated regularly by the Company's chief operating decision maker in deciding how to allocate resources and in assessing performance. The chief operating decision maker for the Company is the chief executive officer. The chief executive officer reviews financial information presented on a consolidated basis, accompanied by information about revenue by product line and geographic region for purposes of allocating resources and evaluating financial performance.

The Company has one business activity and there are no segment managers who are held accountable for operations, operating results or plans for levels or components below the consolidated unit level. Accordingly, the Company has determined that it has a single operating and reporting segment. Revenue by geography is based on the billing address of the customer.

Net Revenue

In reports filed prior to its Annual Report on Form 10-K for the year ended December 31, 2016, the Company classified revenue from its "local" products — consisting of business listing and advertising products sold directly to businesses and Yelp Reservations — as local revenue, and classified revenue generated through partner arrangements, including resale of advertising products by certain partners, and monetization of remnant advertising inventory through third-party ad networks as other services revenue.

The Company now classifies revenue from all of its business listing and advertising products, including advertising and listings sold by partners, as advertising revenue. As a result, revenue generated through ad resales and monetization of remnant advertising inventory through third-party ad networks is now classified as advertising revenue rather than other services revenue, and revenue from Yelp Reservations, a subscription service, is recognized as other services revenue. All disclosures relating to revenue by product have been updated to this revised classification for all periods presented.

The following table presents the Company's net revenue by product line for the periods presented (in thousands) reflecting the changes to its revenue categories described above:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Net revenue by product:				
Advertising	\$ 186,602	\$ 156,697	\$ 363,651	\$ 299,745
Transactions	18,435	15,518	36,500	30,016
Other services	3,827	1,213	6,036	2,280
Total net revenue	\$ 208,864	\$ 173,428	\$ 406,187	\$ 332,041

For purposes of comparison, the following table presents the Company's net revenue by product line for the periods presented (in thousands) based on the revenue categories in effect prior to the three months ended December 31, 2016:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2017	2016	2017	2016
Net revenue by product:				
Local	\$ 181,650	\$ 151,879	\$ 353,694	\$ 289,996
Transactions	18,435	15,518	36,500	30,016
Other services	8,779	6,031	15,993	12,029
Total net revenue	<u>\$ 208,864</u>	<u>\$ 173,428</u>	<u>\$ 406,187</u>	<u>\$ 332,041</u>

During the three and six months ended June 30, 2017 and 2016, no individual customer accounted for 10% or more of consolidated net revenue.

The following table presents the Company's net revenue by geographic region for the periods indicated (in thousands):

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2017	2016	2017	2016
United States	\$ 205,441	\$ 169,724	\$ 399,351	\$ 325,113
All other countries	3,423	3,704	6,836	6,928
Total net revenue	<u>\$ 208,864</u>	<u>\$ 173,428</u>	<u>\$ 406,187</u>	<u>\$ 332,041</u>

Long-Lived Assets

The following table presents the Company's long-lived assets by geographic region for the periods indicated (in thousands):

	June 30, 2017	December 31, 2016
United States	\$ 88,378	\$ 89,362
All other countries	3,336	3,078
Total long-lived assets	<u>\$ 91,714</u>	<u>\$ 92,440</u>

17. RESTRUCTURING AND INTEGRATION

The following table presents the Company's restructuring and integration costs for the periods indicated (in thousands):

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2017	2016	2017	2016
Restructuring and integration	\$ 21	\$ -	\$ 251	\$ -

On November 2, 2016, the Company announced plans to significantly reduce sales and marketing activities in markets outside of the United States and Canada. The restructuring plan was substantially completed by December 31, 2016. The Company incurred \$0.1 million and \$0.3 million for the three and six months ended June 30, 2017, respectively, in restructuring and integration costs associated with this plan related to severance costs for affected employees. The Company expects the remaining \$0.3 million accrued restructuring and integration costs as of June 30, 2017 to be paid during the year ended December 31, 2017. Any additional expense related to this restructuring plan incurred in the future is expected to be immaterial. No goodwill, intangible assets or other long lived assets were impaired as a result of the restructuring plan.

18. SUBSEQUENT EVENTS

Proposed Sale of Eat24, LLC and Grubhub Partnership

On August 3, 2017, the Company and Eat24, LLC, a wholly owned subsidiary of the Company ("Eat24"), entered into a Unit Purchase Agreement (the "Purchase Agreement") with Grubhub Inc. ("Grubhub") and Grubhub Holdings, Inc. ("Purchaser"), a wholly owned subsidiary of Grubhub.

Pursuant to the Purchase Agreement, Purchaser agreed to acquire all of the outstanding equity interests in Eat24 from the Company for \$287.5 million in cash upon the terms and subject to the conditions set forth in the Purchase Agreement (the "Acquisition"). The Company also agreed to transfer certain assets to Eat24 immediately prior to the closing of the Acquisition, which will consist of assets that are material to or necessary for the operation of the Eat24 business that are not then owned by Eat24.

The purchase price will be paid to the Company upon the closing of the Acquisition and will be subject to customary post-closing adjustments. The timing of the closing is dependent on a number of factors including, but not limited to, receipt of approval or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. Of the purchase amount, \$28.8 million will be held in escrow for an 18-month period after closing to secure Purchaser's indemnification rights. Any gain or loss resulting from the Acquisition will be determined and recognized as of the closing date.

Concurrently with the execution of the Purchase Agreement, the Company and Purchaser entered into a Marketing Partnership Agreement ("Partnership Agreement") to expand the Company's online ordering capabilities, which will become effective upon the closing of the Acquisition. Under the Partnership Agreement, following the closing of the Acquisition, the Company agreed to integrate Grubhub's restaurant network into the Yelp Platform to allow users of the Company's website and mobile app to place orders for delivery or pickup through Grubhub's food-ordering marketplace. The Partnership Agreement has an initial term of five years, and may renew for an additional two years upon the mutual agreement of the Company and Purchaser.

Stock Repurchase Program

On July 31, 2017, the Company's board of directors authorized a stock repurchase program under which the Company may repurchase of up to \$200 million of its outstanding common stock. The Company may purchase shares at management's discretion in the open market, in privately negotiated transactions, in transactions structured through investment banking institutions, or a combination of the foregoing. The program is not subject to any time limit and may be modified, suspended, or discontinued at any time. The Company expects to fund the stock repurchase program with cash available on its balance sheet.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report. This discussion contains forward-looking statements that reflect our plans, estimates and beliefs, and involve risks and uncertainties. Our actual results and the timing of certain events could differ materially from those anticipated in these forward-looking statements as a result of several factors, including those discussed in the section titled "Risk Factors" included under Part II, Item 1A and elsewhere in this Quarterly Report. See "Special Note Regarding Forward-Looking Statements" in this Quarterly Report.

Overview

Yelp connects people with great local businesses by bringing "word of mouth" online and providing a platform for businesses and consumers to engage and transact. Our platform provides value to consumers and businesses alike by connecting consumers with great local businesses at the critical moment when they are deciding where to spend their money. Each day, millions of consumers use our platform to find and interact with local businesses, which in turn use our free and paid services to help them engage with consumers. The Yelp Platform, which allows consumers and businesses to transact directly on Yelp, provides consumers with a continuous experience from discovery to completion of transactions and local businesses with an additional point of consumer engagement.

Our success is primarily the result of significant investment in our communities, employees, content, brand and technology. We believe that continued investment in our business provides our largest opportunity for future growth and plan to continue to invest for long-term growth in our key strategies:

- *Network Effect.* We plan to invest in marketing and product development aimed at both attracting more, and increasing the engagement of, consumers as we look to leverage our brand and benefit from network dynamics in Yelp communities. For example, we collaborated with Food Network to create "Help My Yelp" — a television show featuring businesses working to improve their online reputations with the help of Yelp community feedback — which premiered in the second quarter of 2017.
- *Enhance Monetization.* We plan to continue to invest in initiatives to enhance our monetization opportunities in the United States and Canada. Initiatives we have invested in, and plan to continue to invest in, include aggressively growing our sales force and broadening our sales strategy, as well as expanding the Yelp Platform and business owner products and tools. For example, in April 2017, we acquired Turnstyle Analytics Inc. ("Turnstyle"), a company offering businesses a Wi-Fi-based digital marketing and analytics platform for customer retention and loyalty, which we will now offer under the name Yelp Wi-Fi.

Our overall strategy is to invest for long-term growth. During the remainder of 2017, we expect to continue to invest heavily in our sales and marketing efforts by growing our sales force and continuing our advertising campaigns, as well as continue the integration of Nowait, Inc. and Turnstyle. As of June 30, 2017, we had 4,868 full time employees, comprised of 4,617 salaried employees and 251 non-salaried support staff, which represents an increase of 12% compared to June 30, 2016.

On July 31, 2017, our board of directors authorized a stock repurchase program under which we may repurchase up to \$200 million of our outstanding common stock. We expect to fund the stock repurchase program with cash available on our balance sheet.

Key Metrics

We regularly review a number of metrics, including the following key metrics, to evaluate our business, measure our performance, identify trends in our business, prepare financial projections and make strategic decisions. Unless otherwise stated, these metrics do not include metrics for Yelp Eat24, Yelp Reservations, Yelp Nowait, Yelp Wi-Fi or from our business owner products.

Reviews

Number of reviews represents the cumulative number of reviews submitted to Yelp since inception, as of the period end, including reviews that were not recommended or had been removed from our platform. In addition to the text of the review, each review includes a rating of one to five stars. We include reviews that are not recommended and that have been removed because all of them are either currently accessible on our platform or were accessible at some point in time, providing information that may be useful to users to evaluate businesses and individual reviewers. Because our automated recommendation software continually reassesses which reviews to recommend based on new information that becomes available, the "recommended" or "not recommended" status of reviews may change over time. Reviews that are not recommended or that have been removed do not factor into a business's overall star rating. By clicking on a link on a reviewed business's page on our website, users can access the reviews that are not currently recommended for the business, as well as the star rating and other information about reviews that were removed for violation of our terms of service.

As of June 30, 2017, approximately 125.1 million reviews were available on business listing pages, including approximately 30.3 million reviews that were not recommended, after 9.5 million reviews had been removed from our platform, either by us for violation of our terms of service or by the users who contributed them. The following table presents the number of cumulative reviews as of the dates indicated:

	As of June 30,	
	2017	2016
	(in thousands)	
Reviews	134,591	108,251

Traffic

Traffic to our website and mobile app has three components: visitors to our non-mobile optimized website (our “desktop website”), visitors to our mobile-optimized website (our “mobile website”) and mobile devices accessing our mobile app. We use the following metrics to measure each of these traffic streams:

Desktop and Mobile Website Unique Visitors. We calculate desktop unique visitors as the number of “users,” as measured by Google Analytics, who have visited our desktop website at least once in a given month, averaged over a given three-month period. Similarly, we calculate mobile website unique visitors as the number of “users” who have visited our mobile website at least once in a given month, averaged over a given three-month period.

Google Analytics, a product from Google Inc. that provides digital marketing intelligence, measures “users” based on unique cookie identifiers. Because the numbers of desktop unique visitors and mobile website unique visitors are therefore based on unique cookies, an individual who accesses our desktop website or mobile website from multiple devices with different cookies may be counted as multiple desktop unique visitors or mobile website unique visitors, as applicable, and multiple individuals who access our desktop website or mobile website from a shared device with a single cookie may be counted as a single desktop unique visitor or mobile website unique visitor.

App Unique Devices. We calculate app unique devices as the number of unique mobile devices using our mobile app in a given month, averaged over a given three-month period. Under this method of calculation, an individual who accesses our mobile app from multiple mobile devices will be counted as multiple app unique devices. Multiple individuals who access our mobile app from a shared device will be counted as a single app unique device.

We anticipate that our mobile traffic will be the driver of our growth for the foreseeable future.

The following table presents our traffic for the periods indicated:

	Three Months Ended	
	June 30,	
	2017	2016
	(in thousands)	
Desktop Unique Visitors	82,998	73,406
Mobile Website Unique Visitors	74,101	69,327
App Unique Devices	27,987	23,010

We are continually seeking to improve our ability to measure traffic and our other key metrics, and regularly review our processes to assess potential improvements to their accuracy. In the course of such a review, we recently discovered that a portion of our desktop traffic, as measured by Google Analytics, since the third quarter of 2016 has been attributable to a single robot. Because the traffic from this robot does not represent valid consumer traffic, we have adjusted the number of desktop unique visitors we are reporting above for the three months ended June 30, 2017 to remove such traffic to provide greater accuracy and transparency. The adjusted desktop unique visitors for the third quarter of 2016, fourth quarter of 2016 and first quarter of 2017 are (in thousands): 71,409, 67,888, and 78,167, respectively. For additional information, please see the risk factor included under Part II, Item 1A under the heading “ *We rely on data from both internal tools and third parties to calculate certain of our performance metrics. Real or perceived inaccuracies in such metrics may harm our reputation and negatively affect our business.* ”

Claimed Local Business Locations

The number of claimed local business locations represents the cumulative number of business locations that have been claimed on Yelp worldwide since 2008, as of a given date. We define a claimed local business location as each business address for which a business representative has visited our website and claimed the free business listing page for the business located at that address. The following table presents the number of cumulative claimed local business locations as of the dates presented:

	As of June 30,	
	2017	2016
	(in thousands)	
Claimed Local Business Locations	3,753	3,010

Paying Advertising Accounts

Paying advertising accounts comprise all business accounts from which we recognized advertising revenue in a given three-month period. As with our advertising revenue classification, paying advertising accounts includes customer accounts that purchased our core marketing services from partners and resellers, and excludes Yelp Reservations customers that are not also advertising customers. The following table presents the number of paying advertising accounts during the periods presented:

	Three Months Ended	
	June 30,	
	2017	2016
	(in thousands)	
Paying Advertising Accounts	148	125

Non-GAAP Financial Measures

Our condensed consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States (“GAAP”). However, we have also disclosed below EBITDA, adjusted EBITDA and non-GAAP net income, which are non-GAAP financial measures. We have included EBITDA, adjusted EBITDA and non-GAAP net income because they are key measures used by our management and board of directors to understand and evaluate our operating performance and trends, to prepare and approve our annual budget and to develop short- and long-term operational plans. In particular, the exclusion of certain expenses in calculating EBITDA, adjusted EBITDA and non-GAAP net income can provide a useful measure for period-to-period comparisons of our primary business operations. Accordingly, we believe that EBITDA, adjusted EBITDA and non-GAAP net income provide useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

EBITDA, adjusted EBITDA and non-GAAP net income have limitations as analytical tools, and you should not consider them in isolation or as substitutes for analysis of our results as reported under GAAP. In particular, EBITDA, adjusted EBITDA and non-GAAP net income should not be viewed as substitutes for, or superior to, net loss prepared in accordance with GAAP as a measure of profitability or liquidity. Some of these limitations are:

- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and EBITDA, adjusted EBITDA and non-GAAP net income do not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements;
- EBITDA and adjusted EBITDA do not reflect changes in, or cash requirements for, our working capital needs;
- EBITDA, adjusted EBITDA and non-GAAP net income do not consider the potentially dilutive impact of equity-based compensation;
- EBITDA and adjusted EBITDA do not reflect the impact of valuation allowance recording or release;
- EBITDA and adjusted EBITDA do not reflect tax payments that may represent a reduction in cash available to us;
- EBITDA, adjusted EBITDA and non-GAAP net income do not take into account any restructuring costs; and
- other companies, including companies in our industry, may calculate EBITDA, adjusted EBITDA and non-GAAP net income differently, which reduces their usefulness as comparative measures.

Because of these limitations, you should consider EBITDA, adjusted EBITDA and non-GAAP net income alongside other financial performance measures, including various cash flow metrics, net loss and our other GAAP results. The tables below present reconciliations of net loss to EBITDA, adjusted EBITDA and non-GAAP net income, the most directly comparable GAAP financial measure in each case, for each of the periods indicated.

EBITDA and Adjusted EBITDA

EBITDA is a non-GAAP financial measure that we calculate as net income (loss), adjusted to exclude: provision for income taxes; other income, net; depreciation and amortization; and restructuring and integration costs. EBITDA was \$17.5 million and \$7.4 million for the three months ended June 30, 2017 and 2016, respectively, and \$22.5 million and \$1.3 million for the six months ended June 30, 2017 and 2016, respectively.

Adjusted EBITDA is a non-GAAP financial measure that we calculate as net income (loss), adjusted to exclude: provision for income taxes; other income, net; depreciation and amortization; stock-based compensation expense; and restructuring and integration costs. Adjusted EBITDA was \$42.9 million and \$28.1 million for the three months ended June 30, 2017 and 2016, respectively, and \$72.2 million and \$41.1 million for the six months ended June 30, 2017 and 2016, respectively.

The following is a reconciliation of net income (loss) to EBITDA and adjusted EBITDA:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2017	2016	2017	2016
	(in thousands)		(in thousands)	
Reconciliation of GAAP net income (loss) to EBITDA and adjusted EBITDA:				
GAAP net income (loss)	\$ 7,590	\$ 449	\$ 2,810	\$ (15,003)
Provision for (benefit from) income taxes	118	(1,269)	185	168
Other income, net	(864)	(367)	(1,594)	(625)
Depreciation and amortization	10,662	8,564	20,813	16,753
Restructuring and integration costs	21	-	251	-
EBITDA	17,527	7,377	22,465	1,293
Stock-based compensation	25,365	20,726	49,699	39,836
Adjusted EBITDA	\$ 42,892	\$ 28,103	\$ 72,164	\$ 41,129

Non-GAAP Net Income

Non-GAAP net income is a non-GAAP financial measure that we calculate as net income (loss), adjusted to exclude: stock-based compensation expense; amortization of intangibles; restructuring and integration costs; and the tax effect of stock-based compensation, amortization of intangibles, restructuring and integration costs and valuation allowance. Non-GAAP net income was \$21.6 million and \$12.5 million for the three months ended June 30, 2017 and 2016, respectively, and \$37.9 million and \$18.5 million for the six months ended June 30, 2017 and 2016, respectively. The following is a reconciliation of net income (loss) to non-GAAP net income:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2017	2016	2017	2016
	(in thousands)		(in thousands)	
Reconciliation of GAAP net income (loss) to Non-GAAP net income:				
GAAP net income (loss)	\$ 7,590	\$ 449	\$ 2,810	\$ (15,003)
Stock-based compensation	25,365	20,726	49,699	39,836
Amortization of intangible assets	2,345	1,730	4,278	3,442
Restructuring and integration costs	21	-	251	-
Tax adjustments ⁽¹⁾	(13,684)	(10,389)	(19,127)	(9,796)
Non-GAAP net income	\$ 21,637	\$ 12,516	\$ 37,911	\$ 18,479

(1) Includes tax effects of stock-based compensation, amortization of intangibles, restructuring and integration, and valuation allowance.

Results of Operations

The following tables set forth our results of operations for the periods indicated as a percentage of net revenue for those periods. The period-to-period comparison of financial results is not necessarily indicative of the results of operations to be anticipated for the full year 2017 or any future period.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
	(as a percentage of net revenue)			
Consolidated Statements of Operations Data:				
Net revenue by product:				
Advertising	89%	90%	90%	90%
Transactions	9	9	9	9
Other services	2	1	1	1
Total net revenue	100%	100%	100%	100%
Costs and expenses:				
Cost of revenue (exclusive of depreciation and amortization shown separately below)	9%	9%	9%	9%
Sales and marketing	51	54	53	57
Product development	20	19	20	20
General and administrative	12	14	13	14
Depreciation and amortization	5	5	5	5
Total costs and expenses	97	101	100	105
Income (loss) from operations	3	(1)	-	(5)
Other income (expense), net	-	-	-	-
Income (loss) before income taxes	3	(1)	-	(5)
Benefit from (provision for) income taxes	-	1	-	-
Net income (loss)	3%	-%	-%	(5%)

Three and Six Months Ended June 30, 2017 and 2016

Net Revenue

We generate revenue from our advertising products, transactions and other services.

Advertising. We generate advertising revenue from our advertising programs, which consist of enhanced listing pages and performance and impression-based advertising in search results and elsewhere on our website and mobile app. Advertising revenue also includes revenue generated from resale of our advertising products by certain partners and monetization of remnant advertising inventory through third-party ad networks.

Transactions. We generate revenue from various transactions with consumers, including through Yelp Eat24, Platform transactions and the sale of Yelp Deals and Gift Certificates. Yelp Eat24 generates revenue through arrangements with restaurants, in which restaurants pay a commission percentage fee on orders placed through the Yelp Eat24 platform. We record revenue associated with Yelp Eat24's transactions on a net basis. Our Platform partnerships are revenue-sharing arrangements that provide consumers with the ability to complete food delivery transactions, order flowers and book spa and salon appointments, among others, through third parties directly on Yelp. We earn a fee on our Platform partnerships for acting as an agent for these transactions, which we record on a net basis and include in revenue upon completion of a transaction. Yelp Deals allow merchants to promote themselves and offer discounted goods and services on a real-time basis to consumers directly on our website and mobile app. We earn a fee on Yelp Deals for acting as an agent in these transactions, which we record on a net basis and include in revenue upon a consumer's purchase of a deal. Gift Certificates allow merchants to sell full-priced gift certificates directly to consumers through their business listing pages. We earn a fee based on the amount of the Gift Certificate sold, which we record on a net basis and include in revenue upon a consumer's purchase of the Gift Certificate.

Other Services. We generate revenue through our Yelp Reservations and Yelp Nowait products, the Yelp Wi-Fi marketing and analytics platform, licensing payments for access to Yelp data through our Yelp Knowledge program and other non-advertising related partnerships.

The following table provides a breakdown of our net revenue for the periods indicated:

	Three Months Ended June 30,		2016 to 2017 % Change	Six Months Ended June 30,		2016 to 2017 % Change
	2017	2016		2017	2016	
	(in thousands)			(in thousands)		
Net revenue by product:						
Advertising	\$ 186,602	\$ 156,697	19%	\$ 363,651	\$ 299,745	21%
Transactions	18,435	15,518	19	36,500	30,016	22
Other services	3,827	1,213	215	6,036	2,280	165
Total net revenue	<u>\$ 208,864</u>	<u>\$ 173,428</u>	<u>20%</u>	<u>\$ 406,187</u>	<u>\$ 332,041</u>	<u>22%</u>
Percentage of total net revenue by product:						
Advertising	89%	90%		90%	90%	
Transactions	9	9		9	9	
Other services	<u>2</u>	<u>1</u>		<u>1</u>	<u>1</u>	
Total net revenue	100%	100%		100%	100%	

Total net revenue increased \$35.4 million, or 20%, in the three months ended June 30, 2017 compared to the three months ended June 30, 2016, and \$74.1 million, or 22%, in the six months ended June 30, 2017 compared to the six months ended June 30, 2016.

Advertising revenue increased \$29.9 million, or 19%, in the three months ended June 30, 2017 compared to the three months ended June 30, 2016, and \$63.9 million, or 21%, in the six months ended June 30, 2017 compared to the six months ended June 30, 2016. The increase in both periods was primarily due to a significant increase in the number of customers purchasing advertising plans as we expanded our sales force to reach more businesses. The growth was driven primarily by purchases of cost-per-click advertising and a majority of ad clicks were delivered on mobile in the three and six months ended June 30, 2017.

Transactions revenue increased \$2.9 million, or 19%, in the three months ended June 30, 2017 compared to the three months ended June 30, 2016, and \$6.5 million, or 22%, in the six months ended June 30, 2017 compared to the six months ended June 30, 2016. The increase in both periods was primarily the result of increased transactions from Yelp Eat24.

Other services revenue increased \$2.6 million, or 215%, in the three months ended June 30, 2017 compared to the three months ended June 30, 2016, and \$3.8 million, or 165%, in the six months ended June 30, 2017 compared to the six months ended June 30, 2016. The increase in both periods was primarily due to revenue from Yelp Nowait and Yelp Wi-Fi, as a result of our acquisition of Nowait and Turnstyle in February and April 2017, respectively, as well as increases in revenue from the Yelp Knowledge programs and Yelp Reservations.

Cost of Revenue

Our cost of revenue consists primarily of credit card processing fees and web hosting costs, as well as salaries, benefits and stock-based compensation expense for our infrastructure teams related to the operation of our website and mobile app. It also includes costs related to confirmation and delivery services associated with Yelp Eat24 as well as video production for our advertisers. We expect our cost of revenue to remain a consistent percentage of net revenue for the foreseeable future.

	Three Months Ended June 30,		2016 to 2017 % of Change	Six Months Ended June 30,		2016 to 2017 % of Change
	2017	2016		2017	2016	
	(in thousands)			(in thousands)		
Cost of revenue	\$ 18,056	\$ 15,087	20%	\$ 34,970	\$ 30,165	16%
Percentage of net revenue	9%	9%		9%	9%	

Cost of revenue increased \$3.0 million, or 20%, in the three months ended June 30, 2017 compared to the three months ended June 30, 2016, and \$4.8 million, or 16%, in the six months ended June 30, 2017 compared to the six months ended June 30, 2016. The increases in the three and six months ended June 30, 2017 were primarily attributable to increases in confirmation services and third-party food delivery costs associated with Yelp Eat24 of \$1.2 million and \$2.4 million, respectively, due to an increased number of transactions. Merchant fees related to credit card transactions increased by \$1.1 million and \$2.3 million in the three and six months ended June 30, 2017, respectively, primarily due to growth in advertising and transactions revenue. Website infrastructure expense increased \$1.0 million and \$0.8 million in the three and six months ended June 30, 2017, respectively, due to an increase in employee-related costs associated with employees supporting the hosting of the website, offset by lower server hosting costs achieved from improved pricing from key website hosting vendors.

Sales and Marketing

Our sales and marketing expenses primarily consist of salaries (including employer payroll taxes), benefits, travel expense and incentive compensation expense, including stock-based compensation expense, for our sales and marketing employees. In addition, sales and marketing expenses include business and consumer acquisition marketing, community management, branding and advertising costs, as well as allocated facilities, insurance, business taxes and other supporting overhead costs.

In the fourth quarter of 2016, we significantly reduced our sales and marketing activities in markets outside of the United States and Canada. Nevertheless, we expect our sales and marketing expenses to increase as we expand our communities, increase the number of advertising and subscription accounts and continue to build our brand in the United States and Canada. The majority of these expenses will be related to hiring sales employees and Community Managers, as well as costs incurred with various third-party media outlets and other advertising channels.

	Three Months Ended				Six Months Ended		
	June 30,			2016 to	June 30,		2016 to
	2017	2016		2017 % of Change	2017	2016	2017 % of Change
	(in thousands)				(in thousands)		
Sales and marketing	\$ 105,232	\$ 94,402		11%	\$ 214,518	\$ 190,030	13%
Percentage of net revenue	50%	54%			53%	57%	

Sales and marketing expenses increased \$10.8 million, or 11%, in the three months ended June 30, 2017 compared to the three months ended June 30, 2016, and \$24.5 million, or 13%, in the six months ended June 30, 2017 compared to the six months ended June 30, 2016. The increases in the three and six months ended June 30, 2017 were primarily attributable to \$9.3 million and \$19.2 million, respectively, in additional salaries, benefits, travel and other related expenses resulting from increases in headcount, including increases of \$0.4 million and \$0.9 million, respectively, in stock-based compensation expense, as we expanded our sales organization to take advantage of the market opportunity in the United States and Canada. As a result of ongoing marketing campaigns, marketing and advertising costs increased \$0.5 million and \$3.6 million in the three and six months ended June 30, 2017, respectively. In addition, we experienced increases in facilities, insurance, business taxes and other related allocations of \$0.5 million and \$2.3 million in the three and six months ended June 30, 2017, respectively, as a result of the increases in headcount.

Product Development

Our product development expenses primarily consist of salaries (including employer payroll taxes), benefits, travel expense and stock-based compensation expense for our engineers, product management and information technology personnel. In addition, product development expenses include outside services and consulting costs, as well as allocated facilities, insurance, business taxes and other supporting overhead costs. We believe that continued investment in features, software development tools and code modification is important to attaining our strategic objectives and, as a result, we expect product development expenses to continue to increase for the foreseeable future.

	Three Months Ended			Six Months Ended		
	June 30,		2016 to	June 30,		2016 to
	2017	2016	2017 % of Change	2017	2016	2017 % of Change
	(in thousands)			(in thousands)		
Product development	\$ 42,088	\$ 33,098	27%	\$ 81,959	\$ 65,320	25%
Percentage of net revenue	20%	19%		20%	20%	

Product development expenses increased \$9.0 million, or 27%, in the three months ended June 30, 2017 compared to the three months ended June 30, 2016, and \$16.6 million, or 25%, in the six months ended June 30, 2017 compared to the six months ended June 30, 2016. The increases in the three and six months ended June 30, 2017 were primarily attributable to \$7.1 million and \$12.7 million, respectively, in additional salaries and benefits expenses associated with increases in headcount, including increases of \$2.8 million and \$6.0 million, respectively, in stock-based compensation expense (net of capitalized stock-based compensation expense). In addition, we experienced increases in the three and six months ended June 30, 2017 in facilities, insurance, business taxes and other related allocations of \$1.9 million and \$3.8 million, respectively, also as a result of the increases in headcount.

General and Administrative

Our general and administrative expenses primarily consist of salaries (including employer payroll taxes), benefits, travel expense and stock-based compensation expense for our executive, finance, user operations, legal, human resources and other administrative employees. Our general and administrative expenses also include outside consulting, legal and accounting services, as well as facilities, insurance, business taxes and other supporting overhead costs not allocated to other departments. We expect our general and administrative expenses to increase for the foreseeable future as we continue to expand our business.

	Three Months Ended			Six Months Ended		
	June 30,		2016 to	June 30,		2016 to
	2017	2016	2017 % of Change	2017	2016	2017 % of Change
	(in thousands)			(in thousands)		
General and administrative	\$ 25,961	\$ 23,464	11%	\$ 52,275	\$ 45,233	16%
Percentage of net revenue	12%	14%		13%	14%	

General and administrative expenses increased \$2.5 million, or 11%, in the three months ended June 30, 2017 compared to the three months ended June 30, 2016, and \$7.0 million, or 16%, in the six months ended June 30, 2017 compared to the six months ended June 30, 2016. The increases in the three and six months ended June 30, 2017 were primarily attributable to \$2.3 million and \$4.4 million, respectively, in additional salaries, benefits, travel and related expenses associated with increases in headcount, including increases of \$0.8 million and \$1.8 million, respectively, in stock-based compensation expense. Bad debt expense remained relatively consistent in the three months ended June 30, 2017 compared to the prior year, decreasing by \$0.2 million due to improved collection rates from advertising customers even as advertising revenue increased over the same period. Bad debt expense increased by \$1.8 million in the six months ended June 30, 2017 as a result of lower collection rates from advertising customers, particularly during the three months ended March 31, 2017.

Depreciation and Amortization

Depreciation and amortization expenses primarily consist of depreciation on computer equipment, software, leasehold improvements, capitalized website and software development costs and amortization of purchased intangible assets. We expect depreciation and amortization expenses to increase for the foreseeable future as we continue to expand our technology infrastructure.

	Three Months Ended			Six Months Ended		
	June 30,		2016 to	June 30,		2016 to
	2017	2016	2017 % of Change	2017	2016	2017 % of Change
	(in thousands)			(in thousands)		
Depreciation and amortization	\$ 10,662	\$ 8,564	24%	\$ 20,813	\$ 16,753	24%
Percentage of net revenue	5%	5%		5%	5%	

Depreciation and amortization expenses increased \$2.1 million, or 24%, in the three months ended June 30, 2017 compared to the three months ended June 30, 2016, and \$4.1 million, or 24%, in the six months ended June 30, 2017 compared to the six months ended June 30, 2016. The increases were primarily the result of our investments in expanding our technology infrastructure and capital assets to support our increase in headcount across the organization. In the three and six months ended June 30, 2017, depreciation and amortization expenses related to our fixed assets and capitalized website and software development costs increased \$1.5 million and \$3.3 million, respectively. In addition, amortization related to our intangibles increased by \$0.6 million and \$0.8 million in the three and six months ended June 30, 2017, respectively, primarily due to the intangibles acquired in the Nowait and Turnstyle acquisitions.

Restructuring and Integration

	Three Months Ended				Six Months Ended		
	June 30,			2016 to	June 30,		2016 to
	2017	2016		2017 % of Change	2017	2016	2017 % of Change
	(in thousands)				(in thousands)		
Restructuring and integration	\$ 21	\$ -		N/A	\$ 251	\$ -	N/A
Percentage of net revenue	0%	0%			0%	0%	

On November 2, 2016, we announced plans to significantly reduce sales and marketing activities in markets outside of the United States and Canada. The restructuring plan was substantially completed by December 31, 2016. We incurred \$0.1 million and \$0.3 million for the three and six months ended June 30, 2017, respectively, in restructuring and integration costs associated with this plan related to severance costs for affected employees. We expect the remaining \$0.3 million accrued restructuring and integration costs as of June 30, 2017 to be paid during the year ending December 31, 2017. Any additional expense related to this restructuring plan incurred in the future is expected to be immaterial. No goodwill, intangible assets or other long lived assets were impaired as a result of the restructuring plan.

Other Income, Net

Other income, net consists primarily of the interest income earned on our cash, cash equivalents and marketable securities, and foreign exchange gains and losses.

	Three Months Ended				Six Months Ended		
	June 30,			2016 to	June 30,		2016 to
	2017	2016		2017 % of Change	2017	2016	2017 % of Change
	(in thousands)				(in thousands)		
Other income	\$ 864	\$ 367		135%	\$ 1,594	\$ 625	155%
Percentage of net revenue	0%	0%			0%	0%	

Other income, net increased by \$0.5 million in the three months ended June 30, 2017 compared to the three months ended June 30, 2016, and \$1.0 million in the six months ended June 30, 2017 compared to the six months ended June 30, 2016, primarily driven by increases in interest income earned on marketable investments.

(Provision for) Benefit from Income Taxes

(Provision for) benefit from income taxes consists of federal and state income taxes in the United States and income taxes in certain foreign jurisdictions, deferred income taxes reflecting the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax, and the realization of net operating loss carryforwards.

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2017	2016	2017	2016
(Provision for) benefit from taxes	\$ (118)	\$ 1,269	\$ (185)	\$ (168)
Percentage of net revenue	0%	1%	0%	0%

For the three and six months ended June 30, 2017, we recognized tax provisions of \$0.1 million and \$0.2 million, respectively, that primarily consisted of federal and state tax amortization of our indefinite-lived intangibles and discrete expense related to stock-based compensation.

The change for the three months ended June 30, 2017 as compared to the three months ended June 30, 2016 was primarily related to an adjustment for the initial adoption of an actual year-to-date tax rate in jurisdictions where a small change in estimated ordinary income had a significant impact on the effective tax rate in the three months ended June 30, 2016. In 2017, we continued to apply an actual year-to-date tax rate in such jurisdictions, so no adjustment was required in the three months ended June 30, 2017.

The tax provisions for the six months ended June 30, 2017 and 2016 remained consistent.

Liquidity and Capital Resources

As of June 30, 2017, we had cash and cash equivalents of \$319.8 million. Cash and cash equivalents consist of both cash and money market funds. Our cash held internationally as of June 30, 2017 was \$8.5 million. We did not have any outstanding bank loans or credit facilities in place as of June 30, 2017. Our investment portfolio comprises highly rated marketable securities, and our investment policy limits the amount of credit exposure to any one issuer. The policy generally requires securities to be investment grade (i.e. rated 'A' or higher by bond rating firms) with the objective of minimizing the potential risk of principal loss. To date, we have been able to finance our operations and our acquisitions through proceeds from private and public financings, including our initial public offering in March 2012, our follow-on offering in October 2013, cash generated from operations and, to a lesser extent, cash provided by the exercise of employee stock options and purchases under the 2012 Employee Stock Purchase Plan, as amended ("ESPP").

Our future capital requirements and the adequacy of available funds will depend on many factors, including those set forth under “*Risk Factors*” in this Quarterly Report. We believe that our existing cash and cash equivalents, together with any cash generated from operations, will be sufficient to meet our working capital requirements and anticipated purchases of property and equipment for at least the next 12 months. However, this estimate is based on a number of assumptions that may prove to be wrong and we could exhaust our available cash and cash equivalents earlier than presently anticipated. We may require or otherwise seek additional funds in the next 12 months to respond to business challenges, including the need to develop new features and products or enhance existing services, improve our operating infrastructure or acquire complementary businesses and technologies, and, accordingly, we may need to engage in equity or debt financings to secure additional funds.

Amounts deposited with third-party financial institutions exceed the Federal Deposit Insurance Corporation and Securities Investor Protection Corporation insurance limits, as applicable. These cash and cash equivalents could be impacted if the underlying financial institutions fail or are subjected to other adverse conditions in the financial markets. To date, we have experienced no loss or lack of access to our cash and cash equivalents; however, we can provide no assurances that access to our invested cash and cash equivalents will not be impacted by adverse conditions in the financial markets.

Cash Flows

The following table summarizes our cash flows for the periods indicated:

	Six Months Ended June 30,	
	2017	2016
	(in thousands)	
Consolidated Statements of Cash Flows Data:		
Purchases of property, equipment, and software	\$ (4,079)	\$ (12,438)
Depreciation and amortization	20,813	16,753
Cash provided by operating activities	76,323	46,510
Cash used in investing activities	(48,672)	(29,733)
Cash provided by financing activities	19,354	7,855

Operating Activities. We generated \$76.3 million of cash from operating activities during the six months ended June 30, 2017, primarily resulting from our net income of \$2.8 million, which included non-cash depreciation and amortization expenses of \$20.8 million, non-cash stock-based compensation expense of \$49.7 million and non-cash provision for doubtful accounts and sales returns of \$8.9 million. In addition, significant changes in our operating assets and liabilities resulted from the following:

- an increase in accounts receivable of \$7.7 million due to an increase in billings for advertising plans, as well as the timing of payments from these customers; and
- an increase in accounts payable, accrued expenses and other liabilities of \$1.5 million, primarily driven by an increase in accrued vacation and employee-related expenses and the timing of invoices and payments to various vendors.

We generated \$46.5 million of cash from operating activities during the six months ended June 30, 2016, primarily resulting from our net loss of \$15.0 million, which included non-cash depreciation and amortization expenses of \$16.8 million, non-cash stock-based compensation expense of \$39.8 million and non-cash provision for doubtful accounts and sales returns of \$7.4 million. In addition, significant changes in our operating assets and liabilities resulted from the following:

- an increase in accounts receivable of \$13.2 million due to an increase in billings for local advertising plans, as well as the timing of payments from these customers;
- an increase in accounts payable, accrued expenses and other liabilities of \$6.0 million related to the growth in our business, increase in Eat24 restaurant payable, accrued vacation and employee-related expenses, and the timing of invoices and payments to vendors; and
- a decrease in prepaids and other assets of \$3.5 million primarily due to the collection of non-trade receivables of \$6.5 million, offset by a \$3.0 million increase in prepayments and other assets.

Investing Activities. Our primary investing activities in the six months ended June 30, 2017 consisted of purchases of marketable securities, our acquisitions of Nowait and Turnstyle, purchases of property and equipment to support the ongoing build-out of leasehold improvements for our new facilities in San Francisco and other locations, the purchase of technology hardware to support our growth in headcount and software to support website and mobile app development, website operations and our corporate infrastructure. Purchases of property, equipment and software may vary from period to period due to the timing of the expansion of our offices, operations and website and internal-use software and development.

We used \$48.7 million of cash in investing activities during the six months ended June 30, 2017. Cash used in investing activities primarily related to purchases of marketable securities of \$124.9 million, expenditures related to website and internally developed software of \$8.0 million, and purchases of property, equipment and software of \$4.1 million to support the growth in our business, as well as our acquisition of Nowait for net cash consideration of \$30.8 million, which included intangible assets of \$12.7 million, and our acquisition of Turnstyle for net cash consideration of \$19.7 million, which included intangible assets of \$4.3 million. Cash used in investing activities was offset by the maturity of \$140.0 million of investment securities held-to-maturity.

We used \$29.7 million of cash in investing activities during the six months ended June 30, 2016. Cash used in investing activities primarily related to purchases of marketable securities of \$161.9 million, an increase in expenditures related to website and internally developed software of \$7.0 million and purchases of property, equipment and software of \$12.4 million to support the growth in our business. In addition, as part of our lease agreements for additional office space, we were obligated to deliver additional letters of credit, which resulted in an increase of \$0.8 million in restricted cash. Cash used in investing activities was offset by the maturity of \$152.5 million of investment securities held-to-maturity.

Financing Activities. During the six months ended June 30, 2017 and 2016, we generated \$19.4 million and \$7.9 million, respectively, in financing activities from the issuance of common stock upon the exercise of stock options and the sale of common stock under the ESPP.

Stock Repurchase Program

On July 31, 2017, our board of directors authorized a stock repurchase program under which we may repurchase up to \$200 million of our outstanding common stock. We may purchase shares at our discretion in the open market, privately negotiated transactions, in transactions structured through investment banking institutions, or a combination of the foregoing. The program is not subject to any time limit and may be modified, suspended or discontinued at any time. The amount and timing of repurchases are subject to a variety of factors, including liquidity, cash flow and market conditions. We expect to fund the stock repurchase program with cash available on our balance sheet.

Off Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

Contractual Obligations

We lease various office facilities, including our corporate headquarters in San Francisco, California, under operating lease agreements that expire from 2017 to 2025. The terms of the lease agreements provide for rental payments on a graduated basis. We recognize rent expense on a straight-line basis over the lease periods. We do not have any debt or material capital lease obligations, and all of our property, equipment and software have been purchased with cash. As of June 30, 2017, we had no material long-term purchase obligations outstanding with vendors or third parties other than obligations related to the fit out of certain leasehold properties. The following table summarizes our future minimum payments under non-cancelable operating leases and purchase obligations for equipment and office facilities as of June 30, 2017:

	Payments Due by Period				
	Total	Less Than 1 Year	1 – 3 Years	3 – 5 Years	More Than 5 Years
	(in thousands)				
Operating lease obligations	\$ 289,598	\$ 44,964	\$ 90,954	\$ 76,757	\$ 76,923
Purchase obligations	\$ 51,208	\$ 29,987	\$ 20,426	\$ 795	\$ -

The contractual commitment amounts in the table above are associated with binding agreements and do not include obligations under contracts that we can cancel without a significant penalty. In addition, as of June 30, 2017, our total liability for uncertain tax positions was \$0.5 million of the total unrecognized benefit of \$12.3 million. We are not reasonably able to estimate the timing of future cash flow related to this liability. As a result, this amount is not included in the contractual obligations table above.

We have subleased certain office facilities under operating lease agreements that expire in 2021. The terms of these lease agreements provide for rental receipts on a graduated basis. We recognize sublease rentals on a straight-line basis over the lease periods reflected as a reduction in rental expense. As of June 30, 2017, our future minimum rental receipts to be received under non-cancelable subleases were \$7.3 million.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We have operations both within the United States and internationally, and we are exposed to market risks in the ordinary course of business. These risks include primarily interest rate, foreign exchange risks and inflation.

Interest Rate Fluctuation

The primary objective of our investment activities is to preserve principal while maximizing income without significantly increasing risk.

Our cash and cash equivalents consist of cash and money market funds. We do not have any long-term borrowings. Because our cash and cash equivalents have a relatively short maturity, their fair value is relatively insensitive to interest rate changes. We believe a hypothetical 10% increase in the interest rates as of June 30, 2017 would not have a material impact on our cash and cash equivalents portfolio.

Our marketable securities consist of fixed-rate debt securities issued by U.S. corporations, U.S. government agencies and the U.S. Treasury; as such, their fair value may be affected by fluctuations in interest rates in the broader economy. As we have both the ability and intent to hold these securities to maturity, such fluctuations would have no impact on our results of operations.

Foreign Currency Exchange Risk

We have foreign currency risks related to our revenue and operating expenses denominated in currencies other than the U.S. dollar, principally in the British pound sterling, the Canadian dollar and the Euro. The volatility of exchange rates depends on many factors that we cannot forecast with reliable accuracy. Although we have experienced and will continue to experience fluctuations in net income (loss) as a result of transaction gains (losses), net related to revaluing certain cash balances, trade accounts receivable balances and intercompany balances that are denominated in currencies other than the U.S. dollar, we believe a hypothetical 10% strengthening/(weakening) of the U.S. dollar against the British pound sterling, Canadian dollar or Euro, either alone or in combination with each other, would not have a material impact on our results of operations. In the event our foreign sales and expenses increase as a proportion of our overall sales and expenses, our operating results may be more greatly affected by fluctuations in the exchange rates of the currencies in which we do business. At this time, we do not enter into derivatives or other financial instruments in an attempt to hedge our foreign currency exchange risk, though we may in the future. It is difficult to predict the impact hedging activities would have on our results of operations.

Inflation Risk

We do not believe that inflation has had a material effect on our business, financial condition or results of operations. If our costs were to become subject to significant inflationary pressures, we may not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition or results of operations.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the U.S. Security and Exchange Commission’s (“SEC”) rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as of June 30, 2017. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of June 30, 2017, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control Over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended June 30, 2017 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls

Our management, including our Chief Executive Officer and our Chief Financial Officer, believes that our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives and are effective at the reasonable assurance level. However, our management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by the collusion of two or more people or by management override of controls. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

In August 2014, two putative class action lawsuits alleging violations of federal securities laws were filed in the U.S. District Court for the Northern District of California, naming as defendants us and certain of our officers. The lawsuits allege violations of the Exchange Act by us and our officers for allegedly making materially false and misleading statements regarding our business and operations between October 29, 2013 and April 3, 2014. These cases were subsequently consolidated and, in January 2015, the plaintiffs filed a consolidated complaint seeking unspecified monetary damages and other relief. Following the court's dismissal of the consolidated complaint on April 21, 2015, the plaintiffs filed a first amended complaint on May 21, 2015. On November 24, 2015, the court dismissed the first amended complaint with prejudice, and entered judgment in our favor on December 28, 2015. The plaintiffs have appealed this decision to the U.S. Court of Appeals for the Ninth Circuit, and a hearing has been scheduled for September 11, 2017.

On April 23, 2015, a putative class action lawsuit was filed by former Eat24 employees in the Superior Court of California for San Francisco County, naming as defendants us and Eat24. The lawsuit asserts that we failed to permit meal and rest periods for certain current and former employees working as Eat24 customer support specialists, and alleges violations of the California Labor Code, applicable Industrial Welfare Commission Wage Orders and the California Business and Professions Code. The plaintiffs seek monetary damages in an unspecified amount and injunctive relief. On May 29, 2015, plaintiffs filed a first amended complaint asserting an additional cause of action for penalties under the Private Attorneys General Act. In January 2016, we reached a preliminary agreement to settle this matter, which the court preliminarily approved on June 27, 2016. The settlement received final court approval on December 5, 2016 and the \$0.6 million settlement amount was paid on February 8, 2017.

On June 24, 2015, a former Eat24 sales employee filed a lawsuit, on behalf of herself and a putative class of current and former Eat24 sales employees, against Eat24 in the Superior Court of California for San Francisco County. The lawsuit alleges that Eat24 failed to pay required wages, including overtime wages, allow meal and rest periods and maintain proper records, and asserts causes of action under the California Labor Code, applicable Industrial Welfare Commission Wage Orders and the California Business and Professions Code. The plaintiff seeks monetary damages and penalties in unspecified amounts, as well as injunctive relief. On August 3, 2015, the plaintiff filed a first amended complaint asserting an additional cause of action for penalties under the Private Attorneys General Act. In January 2016, we reached a preliminary agreement to settle this matter, which the court preliminarily approved on August 29, 2016. The settlement received final court approval on February 1, 2017 and the \$0.2 million settlement amount was paid on March 29, 2017.

In addition, we are subject to legal proceedings arising in the ordinary course of business. Although the results of litigation and claims cannot be predicted with certainty, we currently do not believe that the final outcome of any of these matters will have a material adverse effect on our business, financial position, results of operations or cash flows.

ITEM 1A. RISK FACTORS

Our operations and financial results are subject to various risks and uncertainties, including those described below, which could adversely affect our business, financial condition, results of operations, cash flows and the trading price of our common stock. You should carefully consider the risks and uncertainties described below before making an investment decision.

We have marked with an asterisk () those risks described below that reflect substantive changes from the risks described in our Annual Report on Form 10-K for the year ended December 31, 2016.*

Risks Related to Our Business and Industry

****If we are unable to increase traffic to our mobile app and website, or user engagement on our platform declines, our revenue, business and operating results may be harmed.***

We derive substantially all of our revenue from the sale of impression- and click-based advertising. Because traffic to our platform determines the number of ads we are able to show, affects the value of those ads to businesses and influences the content creation that drives further traffic, slower traffic growth rates may harm our business and financial results. As a result, our ability to grow our business depends on our ability to increase traffic to and user engagement on our platform. Our traffic could be adversely affected by factors including:

- ***Reliance on Internet Search Engines*** . As discussed in greater detail below, we rely on Internet search engines to drive traffic to our platform, including our mobile app. However, the display, including rankings, of unpaid search results can be affected by a number of factors, many of which are not in our direct control, and may change frequently. For example, a search engine may change its ranking algorithms, methodologies or design layouts. As a result, links to our platform may not be prominent enough to drive traffic to our platform, and we may not be in a position to influence the results. Although Internet search engine results have allowed us to attract a large audience with low organic traffic acquisition costs to date, if they fail to drive sufficient traffic to our platform in the future, we may need to increase our marketing expenses, which could harm our operating results.

- *Increasing Competition* . The market for information regarding local businesses is intensely competitive and rapidly changing. If the popularity, usefulness, ease of use, performance and reliability of our products and services do not compare favorably to those of our competitors, traffic may decline.
- *Review Concentration* . Our restaurant and shopping categories together accounted for approximately 40% of the businesses that had been reviewed on our platform and approximately 55% of the cumulative reviews as of June 30, 2017. If the high concentration of reviews in these categories generates a perception that our platform is primarily limited to these categories, traffic may not increase or may decline.
- *Our Recommendation Software* . If our automated software does not recommend helpful content or recommends unhelpful content, consumers may reduce or stop their use of our platform. While we have designed our technology to avoid recommending content that we believe to be unreliable or otherwise unhelpful, we cannot guarantee that our efforts will be successful.
- *Content Scraping* . From time to time, other companies copy information from our platform without our permission, through website scraping, robots or other means, and publish or aggregate it with other information for their own benefit. This may make them more competitive and may decrease the likelihood that consumers will visit our platform to find the local businesses and information they seek. This may also result in increases to our reported traffic metrics that do not represent increases in consumer usage of our platform. For example, we recently discovered that a portion of our desktop traffic since the third quarter of 2016 has been attributable to a single robot. Though we strive to detect and prevent this third-party conduct, we may not be able to detect it in a timely manner and, even if we could, may not be able to prevent it. In some cases, particularly in the case of third parties operating outside of the United States, our available remedies may be inadequate to protect us against such conduct.
- *Macroeconomic Conditions* . Consumer purchases of discretionary items generally decline during recessions and other periods in which disposable income is adversely affected. As a result, adverse economic conditions may impact consumer spending, particularly with respect to local businesses, which in turn could adversely impact the number of consumers visiting our platform.
- *Internet Access* . The adoption of any laws or regulations that adversely affect the growth, popularity or use of the Internet, including laws impacting Internet neutrality, could decrease the demand for our services. Similarly, any actions by companies that provide Internet access that degrade, disrupt or increase the cost of user access to our platform could undermine our operations and result in the loss of traffic.

We also anticipate that our traffic growth rate will continue to slow over time, and potentially decrease in certain periods, as our business matures and we achieve higher penetration rates. In particular, we have already entered most major geographic markets within the United States and Canada, and we do not expect to pursue expansion in other international markets in the foreseeable future; further expansion in smaller markets may not yield similar results or sustain our growth. That our traffic growth has slowed in recent quarters even as we have expanded our operations is a reflection of this trend. As our traffic growth rate slows, our success will become increasingly dependent on our ability to increase levels of user engagement on our platform. This dependence may increase as the portion of our revenue derived from performance-based advertising increases. A number of factors may negatively affect our user engagement, including if:

- users engage with other products, services or activities as an alternative to our platform;
- there is a decrease in the perceived quality of the content contributed by our users;
- we fail to introduce new and improved products or features, or we introduce new products or features that do not effectively address consumer needs or otherwise alienate consumers;
- technical or other problems negatively impact the availability and reliability of our platform or otherwise affect the user experience;
- users have difficulty installing, updating or otherwise accessing our platform as a result of actions by us or third parties that we rely on to distribute our products;
- users believe that their experience is diminished as a result of the decisions we make with respect to the frequency, relevance and prominence of the advertising we display; and
- we do not maintain our brand image or our reputation is damaged.

****Consumers are increasingly using mobile devices to access online services. If our mobile platform and mobile advertising products are not compelling, or if we are unable to operate effectively on mobile devices, our business could be adversely affected.***

The number of people who access information about local businesses through mobile devices, including smartphones, tablets and handheld computers, has increased dramatically over the past few years and is expected to continue to increase. Although many consumers access our platform both on their mobile devices and through personal computers, we have seen substantial growth in mobile usage. We anticipate that growth in use of our mobile platform will be the driver of our growth for the foreseeable future and that usage through personal computers may continue to decline. As a result, we must continue to drive adoption of and user engagement on our mobile platform, and our mobile app in particular. If we are unable to drive continued adoption of and engagement on our mobile app, our business may be harmed and we may be unable to decrease our reliance on traffic from Google and other search engines.

In order to attract and retain engaged users of our mobile platform, the mobile products and services we introduce must be compelling. However, the ways in which users engage with our platform and consume content has changed over time, and we expect it will continue to do so as users increasingly engage via mobile. This may make it more difficult to develop mobile products that consumers find useful or provide them with the information they seek, and may also negatively affect our content if users do not continue to contribute high quality content on their mobile devices. In addition, building an engaged base of mobile users may also be complicated by the frequency with which users change or upgrade their mobile services. In the event users choose mobile devices that do not already include or support our mobile app or do not install our mobile app when they change or upgrade their devices, our traffic and user engagement may be harmed.

Our success is also dependent on the interoperability of our mobile products with a range of mobile technologies, systems, networks and standards that we do not control, such as mobile operating systems like Android and iOS. We may not be successful in developing products that operate effectively with these technologies, systems, networks and standards or in creating, maintaining and developing relationships with key participants in the mobile industry, some of which may be our competitors. Any changes that degrade the functionality of our mobile products, give preferential treatment to competitive products or prevent us from delivering advertising could adversely affect mobile usage and monetization. As new mobile devices and platforms are released, it is difficult to predict the problems we may encounter in developing products for these alternative devices and platforms, and we may need to devote significant resources to the creation, support and maintenance of such products. If we experience difficulties in the future integrating our mobile app into mobile devices, or we face increased costs to distribute our mobile app, our user growth and operating results could be harmed.

In addition, the mobile market remains a rapidly evolving market with which we have limited experience. As new devices and platforms are released, users may begin consuming content in a manner that is more difficult to monetize. Similarly, as mobile advertising products develop, demand may increase for products that we do not offer or that may alienate our user base. Although we currently deliver ads on both our mobile app and mobile website, with 69% of ad clicks delivered on mobile in the three months ended June 30, 2017, our continued success depends on our efforts to innovate and introduce enhanced mobile solutions. If our efforts to develop compelling mobile advertising products are not successful — as a result of, for example, the difficulties detailed above — advertisers may stop or reduce their advertising with us. At the same time, we must balance advertiser demands against our commitment to prioritizing the quality of user experience over short-term monetization. For example, we phased out our brand advertising products in part because demand in the brand advertising market has shifted toward products disruptive to the consumer experience, such as video ads. If we are not able to balance these competing considerations successfully, we may not be able to generate meaningful revenue from our mobile products despite the expected growth in mobile usage.

****We rely on Internet search engines and application marketplaces to drive traffic to our platform, certain providers of which offer products and services that compete directly with our products. If links to our applications and website are not displayed prominently, traffic to our platform could decline and our business would be adversely affected.***

Our success depends in part on our ability to attract users through unpaid Internet search results on search engines like Google and Bing. The number of users we attract from search engines to our website (including our mobile website) is due in large part to how and where information from and links to our website are displayed on search engine result pages. The display, including rankings, of unpaid search results can be affected by a number of factors, many of which are not in our direct control, and may change frequently. For example, a search engine may change its ranking algorithms, methodologies or design layouts. As a result, links to our platform may not be prominent enough to drive traffic to our platform, and we may not know how or otherwise be in a position to influence the results.

For example, Google has previously made changes to its algorithms and methodologies that may be contributing to the slowing of our traffic growth rate, particularly in our international markets where we have less content and more competitors. We believe this headwind on our ability to achieve prominent display of our content in international unpaid search results disrupted the network effect we expected in our international markets based on what we experienced domestically, whereby increases in content led to increases in traffic. This was a contributing factor to our decision to reallocate our international sales and marketing resources. Google also previously announced that the rankings of sites showing certain types of app install interstitials could be penalized on its mobile search results pages. While we believe the type of interstitial we currently use is not being penalized, the parameters of Google's policy may change from time to time, be poorly defined and be inconsistently interpreted. For example, in January 2017, Google broadened the categories of interstitials that may be penalized. As a result, Google may unexpectedly penalize our app install interstitials, which may cause links to our mobile website to be featured less prominently in Google's mobile search results page, and traffic to both our mobile website and mobile app may be harmed as a result. We cannot predict the long-term impact of these changes.

Although traffic to our mobile app is less reliant on search results than traffic to our website, growth in mobile device usage may not decrease our overall reliance on search results if mobile users use our mobile website rather than our mobile app. In fact, consumers' increasing use of mobile devices may exacerbate the risks associated with how and where our website is displayed in search results because mobile device screens are smaller than personal computer screens and therefore display fewer search results.

We also rely on application marketplaces, such as Apple's App Store and Google's Play, to drive downloads of our applications. In the future, Apple, Google or other marketplace operators may make changes to their marketplaces that make access to our products more difficult. For example, our applications may receive unfavorable treatment compared to the promotion and placement of competing applications, such as the order in which they appear within marketplaces. Similarly, if problems arise in our relationships with providers of application marketplaces, our user growth could be harmed.

In some instances, search engine companies and application marketplaces may change their displays or rankings in order to promote their own competing products or services or the products or services of one or more of our competitors. For example, Google has integrated its local product offering, Google + Local, with certain of its products, including search. The resulting promotion of Google's own competing products in its web search results has negatively impacted the search ranking of our website. Because Google in particular is the most significant source of traffic to our website, accounting for more than half of the visits to our website during the three months ended June 30, 2017, our success depends on our ability to maintain a prominent presence in search results for queries regarding local businesses on Google. As a result, Google's promotion of its own competing products, or similar actions by Google in the future that have the effect of reducing our prominence or ranking on its search results, could have a substantial negative effect on our business and results of operations.

If our users fail to contribute high quality content or their contributions are not valuable to other users, our traffic and revenue could be negatively affected.

Our success in attracting users depends on our ability to provide consumers with the information they seek, which in turn depends on the quantity and quality of the content contributed by our users. We believe that as the depth and breadth of the content on our platform grow, our platform will become more widely known and relevant to broader audiences, thereby attracting new consumers to our service. However, if we are unable to provide consumers with the information they seek, they may stop or reduce their use of our platform, and traffic to our website and on our mobile app will decline. If our user traffic declines, our advertisers may stop or reduce the amount of advertising on our platform and our business could be harmed. Our ability to provide consumers with valuable content may be harmed:

- if our users do not contribute content that is helpful or reliable;
- if our users remove content they previously submitted;
- as a result of user concerns that they may be harassed or sued by the businesses they review, instances of which have occurred in the past and may occur again in the future; and
- as users increasingly contribute content through our mobile platform, because content contributed through mobile devices tends to be shorter than desktop contributions.

Similarly, if robots, shells or other spam accounts are able to contribute a significant amount of recommended content, or consumers perceive a significant amount of our recommended content to be from such accounts, our traffic and revenue could be negatively affected. Although we do not believe content from these sources has had a material impact to date, if our automated software recommends a substantial amount of such content in the future, our ability to provide high quality content would be harmed and the consumer trust essential to our success could be undermined.

In addition, if our platform does not provide current information about local businesses or users do not perceive reviews on our platform as relevant, our brand and business could be harmed. For example, we do not phase out or remove dated reviews, and consumers may view older reviews as less relevant, helpful or reliable than more recent reviews.

****If we fail to maintain and expand our base of advertisers, our revenue and our business will be harmed.***

Our ability to grow our business depends on our ability to maintain and expand our advertiser base. To do so, we must convince existing and prospective advertisers alike that our advertising products offer a material benefit and can generate a competitive return relative to other alternatives. Our ability to do so depends on factors including:

- *Acceptance of Online Advertising* . We believe that the continued growth and acceptance of our online advertising products will depend on the perceived effectiveness and acceptance of online advertising models generally, which is outside of our control. For example, if ad-blocking programs that affect the delivery of online advertising gain further visibility or traction, the perceived value of online advertising, and that of our advertising products in turn, may be harmed. Many advertisers still have limited experience with online advertising and, as a result, may continue to devote significant portions of their advertising budgets to traditional, offline advertising media, such as newspapers or print yellow pages directories.
- *Competitiveness of Our Products* . We must deliver ads in an effective manner. We may be unable to attract new advertisers if our products are not compelling or we fail to innovate and introduce enhanced products meeting advertiser expectations. For example, in their current form, our ad products may be most attractive to businesses with higher than average ratings and numbers of reviews. As a result, businesses with lower ratings and fewer reviews may not purchase our ad products, or may abandon them if they do not believe our ad products are effective. At the same time, we must balance advertiser demands against our commitment to providing a good user experience. For example, we phased out our brand advertising products in part because demand in the brand advertising market has shifted toward products disruptive to the consumer experience. In addition, we must provide accurate analytics and measurement solutions that demonstrate the value of our advertising products compared to those of our competitors. Similarly, if the pricing of our advertising products does not compare favorably to those of our competitors, advertisers may reduce their advertising with us or choose not to advertise with us at all. The widespread adoption of any technologies that make it more difficult for us to deliver ads, such as ad-blocking programs, could also decrease our value proposition to businesses and reduce demand for our products.
- *Traffic Quality* . The success of our advertising program depends on delivering positive results to our advertising customers. Low-quality or invalid traffic, such as robots, spiders and the mechanical automation of clicking, may be detrimental to our relationships with advertisers and could adversely affect our advertising pricing and revenue. For example, we recently discovered that, beginning in the third quarter of 2016, a portion of our desktop traffic has been attributable to a single robot. While we do not believe the traffic from this robot represents a material amount of our overall reported traffic or has impacted our ad delivery, our delay in detecting and removing such traffic may harm our reputation among advertisers. Similarly, if we fail to detect and prevent click fraud or other invalid clicks on ads, the affected advertisers may experience or perceive a reduced return on their investments, which could lead to dissatisfaction with our products, refusals to pay, refund demands or withdrawal of future business.
- *Perception of Our Platform* . Our ability to compete effectively for advertiser budgets depends on our reputation and perceptions regarding our platform. For example, we may face challenges expanding our advertiser base in businesses outside the restaurant and shopping categories if businesses believe that consumers perceive the utility of our platform to be limited to finding businesses in these categories. The ratings and reviews that businesses receive from our users may also affect their advertising decisions. Favorable ratings and reviews, on the one hand, could be perceived as obviating the need to advertise. Unfavorable ratings and reviews, on the other, could discourage businesses from advertising to an audience that they perceive as hostile or cause them to form a negative opinion of our products and user base.
- *Macroeconomic Conditions* . Adverse macroeconomic conditions can have a negative impact on the demand for advertising, particularly with respect to online advertising products. We rely heavily on small and medium-sized businesses, which often have limited advertising budgets and may be disproportionately affected by economic downturns. In addition, such business may view online advertising as lower priority than offline advertising.

As is typical in our industry, our advertisers generally do not have long-term obligations to purchase our products. Their decisions to renew depend on the degree of satisfaction with our products as well as a number of factors that are outside of our control, including their ability to continue their operations and spending levels. Small and medium-sized local businesses in particular have historically experienced high failure rates. As a result, we may experience attrition in our advertisers in the ordinary course of business resulting from several factors, including losses to competitors, declining advertising budgets, closures and bankruptcies. The negative impact of attrition on our financial results may be greater with respect to advertisers who are billed in arrears, as the vast majority of our advertisers now are, if they fail to make payment on ads that have already been delivered. In addition, our recent phase out of our brand advertising products, which had been an additional source of revenue for us, may make us more susceptible to fluctuations and attrition from small and medium-sized businesses. To grow our business, we must continually add new advertisers to replace advertisers who choose not to renew their advertising, or who go out of business or otherwise fail to fulfill their advertising contracts with us, which we may not be able to do.

If we fail to further develop our domestic markets effectively, our revenue and business will be harmed.

In the fourth quarter of 2016, we wound down our international sales and marketing operations and reallocated the associated resources primarily to our U.S. and Canadian markets. As a result, our continued growth depends on our ability to further develop our U.S. and Canadian communities and operations. However, our communities in many of the largest markets in the United States and Canada are in a relatively late stage of development, and further development of smaller markets may not yield similar results. If we are not able to develop these markets as we expect, or if we fail to address the needs of those markets, our business will be harmed.

****The proposed sale of Eat24 and partnership with Grubhub may not be consummated as or when planned, or at all, and may not achieve the intended benefits.***

The proposed sale of our Eat24 business to Grubhub (the “Acquisition”) may not be consummated as currently contemplated or at all, or may encounter unanticipated delays or other roadblocks, including delays in obtaining necessary regulatory approvals. Because our planned partnership with Grubhub will only be effective upon the closing of the Acquisition, the partnership may similarly be delayed or fail to take effect. Such a delay or failure to consummate the Acquisition and partnership could cause disruptions to our business and operations, including by introducing uncertainty that harms our ability to attract and retain key Eat24 personnel. In addition, preparing for and executing the proposed Acquisition and partnership will also require significant time, resources and expense, and may divert the attention of our management and employees from other aspects of our business operations. Any delays in the closing of the Acquisition and effectiveness of the partnership may increase the amount of resources we devote to these transactions, which could adversely affect our business, financial condition and results of operations. In the event that we complete the proposed Acquisition and the partnership becomes effective, there can be no assurance that we will be able to realize the intended benefits of the partnership.

****We may acquire other companies or technologies, which could divert our management's attention, result in additional dilution to our stockholders and otherwise disrupt our operations and harm our operating results. We may also be unable to realize the expected benefits and synergies of any acquisitions.***

Our success will depend, in part, on our ability to expand our product offerings and grow our business in response to changing technologies, user and advertiser demands and competitive pressures. In some circumstances, we may determine to do so through the acquisition of complementary businesses or technologies rather than through internal development. For example, in February 2017, we acquired Nowait to obtain waitlist system and seating tool technology and in April 2017, we acquired Turnstyle to obtain a Wi-Fi based marketing tool for customer retention and loyalty. We have limited experience as a company in the complex process of acquiring other businesses and technologies. The pursuit of potential future acquisitions may divert the attention of management and cause us to incur expenses in identifying, investigating and pursuing acquisitions, whether or not they are consummated.

Acquisitions that are consummated could result in dilutive issuances of equity securities or the incurrence of debt, which could adversely affect our results of operations. The incurrence of debt in particular could result in increased fixed obligations or include covenants or other restrictions that would impede our ability to manage our operations. In addition, any acquisitions we announce could be viewed negatively by users, businesses or investors. We may also discover liabilities or deficiencies associated with the companies or assets we acquire that we did not identify in advance, which may result in significant unanticipated costs. For example, in 2015, two lawsuits were filed against us by former Eat24 employees alleging that Eat24 failed to comply with certain labor laws prior to the acquisition. The effectiveness of our due diligence review and our ability to evaluate the results of such due diligence are dependent upon the accuracy and completeness of statements and disclosures made by the companies we acquire or their representatives, as well as the limited amount of time in which acquisitions are executed. We may also fail to accurately forecast the financial impact of an acquisition transaction, including tax and accounting charges.

In order to realize the expected benefits and synergies of any acquisition that is consummated, we must meet a number of significant challenges that may create unforeseen operating difficulties and expenditures, including:

- integrating operations, strategies, services, sites and technologies of the acquired company;
- managing the combined business effectively;
- retaining and assimilating the employees of the acquired company;
- retaining existing customers and strategic partners and minimizing disruption to existing relationships as a result of any integration of new personnel;
- difficulties in the assimilation of corporate cultures;
- implementing and retaining uniform standards, controls, procedures, policies and information systems; and
- addressing risks related to the business of the acquired company that may continue to impact the business following the acquisition.

Any inability to integrate services, sites and technologies, operations or personnel in an efficient and timely manner could harm our results of operations. Transition activities are complex and require significant time and resources, and we may not manage the process successfully, particularly if we are managing multiple integrations concurrently, as we currently are with Nowait and Turnstyle. Our ability to integrate complex acquisitions is unproven, particularly with respect to companies that have significant operations or that develop products with which we do not have prior experience. For example, Turnstyle operates a business that is new to us, and we are in the early stages of developing the structures and expertise needed to support this business. We plan to invest resources to support this and any future acquisitions, which will result in ongoing operating expenses and may divert resources and management attention from other areas of our business. We cannot assure you that these investments will be successful. Even if we are able to integrate the operations of any acquired company successfully, these integrations may not result in the realization of the full benefits of synergies, cost savings, innovation and operational efficiencies that may be possible from the combination of the businesses, or we may not achieve these benefits within a reasonable period of time.

We rely on third-party service providers and strategic partners for many aspects of our business, and any failure to maintain these relationships could harm our business.

We rely on relationships with various third parties to grow our business, including strategic partners and technology and content providers. For example, we rely on third parties for data about local businesses, mapping functionality, payment processing and administrative software solutions. We also rely on partners for various transactions available through the Yelp Platform, including Booker for spa and salon appointments, Locu for menu data and BloomNation for flower deliveries, among others. Identifying, negotiating and maintaining relationships with third parties require significant time and resources, as does integrating their data, services and technologies onto our platform. It is possible that these third parties may not be able to devote the resources we expect to the relationships. We may also have competing interests and obligations with respect to our partners in particular, which may make it difficult to maintain, grow or maximize the benefit for each partnership. For example, our entry into the online reservations space with our acquisition of SeatMe, Inc. in 2013 put us in competition with OpenTable, which led to the end of our partnership in 2015. Our focus on integrating additional partners to expand the Yelp Platform may exacerbate this risk.

If our relationships with our partners and providers deteriorate, we could suffer increased costs and delays in our ability to provide consumers and advertisers with content or similar services. We have had, and may in the future have, disagreements or disputes with our partners about our respective contractual obligations, which could result in legal proceedings or negatively affect our brand and reputation. In addition, we exercise limited control over our third-party partners and vendors, which makes us vulnerable to any errors, interruptions or delays in their operations. If these third parties experience any service disruptions, financial distress or other business disruption, or difficulties meeting our requirements or standards, it could make it difficult for us to operate some aspects of our business. For example, we rely on a single supplier to process payments of all transactions made on the Yelp Platform and for purchases of Yelp Deals and Gift Certificates. Any disruption or problems with this supplier or its services could have an adverse effect on our reputation, results of operations and financial results. Similarly, upon expiration or termination of any of our agreements with third-party providers, we may not be able to replace the services provided to us in a timely manner or on terms that are favorable to us, if at all, and a transition from one partner or provider to another could subject us to operational delays and inefficiencies.

We face competition for both local business directory traffic and advertiser spending, and expect competition to increase in the future.

The market for information regarding local businesses and advertising is intensely competitive and rapidly changing. With the emergence of new technologies and market entrants, competition is likely to intensify in the future. We compete for consumer traffic with traditional, offline local business guides and directories, Internet search engines, such as Google and Bing, review and social media websites and various other online service providers. These competitors may include regional review websites that may have strong positions in particular countries. We also compete with these companies for the content of contributors, and may experience decreases in both traffic and user engagement if our competitors offer more compelling environments.

Although advertisers are allocating an increasing amount of their overall marketing budgets to online advertising, such spending lags behind growth in Internet and mobile usage generally, making the market for online advertising intensely competitive. We compete for a share of local businesses' overall advertising budgets with traditional, offline media companies and service providers, as well as Internet marketing providers. Many of these companies have established marketing relationships with local businesses, and certain of our online competitors have substantial proprietary advertising inventory and web traffic that may provide a significant competitive advantage.

Certain competitors could use strong or dominant positions in one or more markets to gain competitive advantage against us in areas in which we operate, including by: integrating review platforms or features into products they control, such as search engines, web browsers or mobile device operating systems; making acquisitions; changing their unpaid search result rankings to promote their own products; refusing to enter into or renew licenses on which we depend; limiting or denying our access to advertising measurement or delivery systems; limiting our ability to target or measure the effectiveness of ads; or making access to our platform more difficult. This risk may be exacerbated by the trend in recent years toward consolidation among online media companies, potentially allowing our larger competitors to offer bundled or integrated products that feature alternatives to our platform.

Our competitors may also enjoy competitive advantages, such as greater name recognition, longer operating histories, substantially greater market share, large existing user bases and substantially greater financial, technical and other resources. Traditional television and print media companies, for example, have large established audiences and more traditional and widely accepted advertising products. These companies may use these advantages to offer products similar to ours at a lower price, develop different products to compete with our current solutions and respond more quickly and effectively than we do to new or changing opportunities, technologies, standards or client requirements. In particular, major Internet companies, such as Google, Facebook, Amazon and Microsoft, may be more successful than us in developing and marketing online advertising offerings directly to local businesses, and may leverage their relationships based on other products or services to gain additional share of advertising budgets.

To compete effectively, we must continue to invest significant resources in product development to enhance user experience and engagement, as well as sales and marketing to expand our base of advertisers. However, there can be no assurance that we will be able to compete successfully for users and advertisers against existing or new competitors, and failure to do so could result in loss of existing users, reduced revenue, increased marketing expenses or diminished brand strength, any of which could harm our business.

****Our business depends on a strong brand, and any failure to maintain, protect and enhance our brand would hurt our ability to retain and expand our base of users and advertisers, as well as our ability to increase the frequency with which they use our products.***

We have developed a strong brand that we believe has contributed significantly to the success of our business. Maintaining, protecting and enhancing the “Yelp” brand are critical to expanding our base of users and advertisers and increasing the frequency with which they use our solutions. Our ability to do so will depend largely on our ability to maintain consumer trust in our products and in the quality and integrity of the user content and other information found on our platform, which we may not do successfully. We dedicate significant resources to these goals, primarily through our automated recommendation software, sting operations targeting the buying and selling of reviews, our consumer alerts program, coordination with consumer protection agencies and law enforcement, and, in certain egregious cases, taking legal action against business we believe to be engaged in deceptive activities. We also endeavor to remove content from our platform that violates our terms of service.

Despite these efforts, we cannot guarantee that each of the 94.7 million reviews on our platform that had been recommended and that had not been removed as of June 30, 2017 is useful or reliable, or that consumers will trust the integrity of our content. For example, if our recommendation software does not recommend helpful content or recommends unhelpful content, consumers and businesses alike may stop or reduce their use of our platform and products. Some consumers and businesses have alternately expressed concern that our technology either recommends too many reviews, thereby recommending some reviews that may not be legitimate, or too few reviews, thereby not recommending some reviews that may be legitimate. If consumers do not believe our recommended reviews to be useful and reliable, they may seek other services to obtain the information for which they are looking, and may not return to our platform as often in the future, or at all. This would negatively impact our ability to retain and attract users and advertisers and the frequency with which they use our platform.

Consumers may also believe that the reviews, photos and other user content contributed by our Community Managers or other employees are influenced by our advertising relationships or are otherwise biased. Although we take steps to prevent this from occurring by, for example, identifying Community Managers as Yelp employees on their account profile pages and explaining their role on our platform, the designation does not appear on the page for each review contributed by the Community Manager and we may not be successful in our efforts to maintain consumer trust. Similarly, the actions of our partners may affect our brand if users do not have a positive experience on the Yelp Platform. If others misuse our brand or pass themselves off as being endorsed or affiliated with us, it could harm our reputation and our business could suffer. For example, we have encountered instances of reputation management companies falsely representing themselves as being affiliated with us when soliciting customers; this practice could be contributing to rumors that business owners can pay to manipulate reviews, rankings and ratings. Our website and mobile app also serve as a platform for expression by our users, and third parties or the public at large may also attribute the political or other sentiments expressed by users on our platform to us, which could harm our reputation.

In addition, negative publicity about our company, including our technology, sales practices, personnel, customer service, litigation, strategic plans or political activities could diminish confidence in our brand and the use of our products. Certain media outlets have previously reported allegations that we manipulate our reviews, rankings and ratings in favor of our advertisers and against non-advertisers. In order to demonstrate that our automated recommendation software applies in a nondiscriminatory manner to both advertisers and non-advertisers, we allow users to access reviews that are both recommended and not recommended by our software. We have also allowed businesses to comment publicly on reviews so that they can provide a response. Nevertheless, our reputation and brand, the traffic to our website and mobile app and our business may suffer if negative publicity about our company persists or if users otherwise perceive that our content is manipulated or biased. Allegations and complaints regarding our business practices, and any resulting negative publicity, may also result in increased regulatory scrutiny of our company. In addition to requiring management time and attention, any regulatory inquiry or investigation could itself result in further negative publicity regardless of its merit or outcome.

Maintaining and enhancing our brand may also require us to make substantial investments, and these investments may not be successful. For example, our trademarks are an important element of our brand. We have faced in the past, and may face in the future, oppositions from third parties to our applications to register key trademarks. If we are unsuccessful in defending against these oppositions, our trademark applications may be denied. Whether or not our trademark applications are denied, third parties may claim that our trademarks infringe their rights. As a result, we could be forced to pay significant settlement costs or cease the use of these trademarks and associated elements of our brand. Doing so could harm our brand recognition and adversely affect our business. If we fail to maintain and enhance our brand successfully, or if we incur excessive expenses in this effort, our business and financial results may be adversely affected.

****If we fail to manage our growth effectively, our brand, results of operations and business could be harmed.***

We have experienced rapid growth in our headcount and operations, including through our acquisitions of other businesses, such as Nowait and Turnstyle in February 2017 and April 2017, respectively, which places substantial demands on management and our operational infrastructure. Most of our employees have been with us for fewer than two years; to manage the expected growth of our operations, we will need to continue to increase the productivity of our current employees and hire, train and manage new employees. In particular, we intend to continue to make substantial investments in our engineering organization as well as our U.S. and Canadian sales, marketing and community management organizations. As a result, we must effectively integrate, develop and motivate a large number of new employees, including employees from any acquired businesses, while maintaining the beneficial aspects of our company culture.

As our business matures, we make periodic changes and adjustments to our organization in response to various internal and external considerations, including market opportunities, the competitive landscape, new and enhanced products, acquisitions, sales performance, increases in headcount and cost levels. In some instances, these changes have resulted in a temporary lack of focus and reduced productivity, which may occur again in connection with any future changes to our organization and may negatively affect our results of operations. Similarly, any significant changes to the way we structure compensation of our sales organization may be disruptive and may affect our ability to generate revenue.

To manage our growth, we may need to improve our operational, financial and management systems and processes, which may require significant capital expenditures and allocation of valuable management and employee resources, as well as subject us to the risk of over-expanding our operating infrastructure. For example, it can be difficult to train thousands of sales employees across multiple offices according to the same business standards, practices and laws, and we have been the subject of lawsuits alleging that we have failed to do so. For example, we are the subject of a putative class action lawsuit alleging that our sales force does not properly disclose that calls may be monitored or recorded for quality assurance. However, if we fail to scale our operations successfully and increase productivity, the quality of our platform and efficiency of our operations could suffer, which could harm our brand, results of operations and business.

We make the consumer experience our highest priority. Our dedication to making decisions based primarily on the best interests of consumers may cause us to forgo short-term gains and advertising revenue.

We base many of our decisions on the best interests of the consumers who use our platform. In the past, we have forgone, and we may in the future forgo, certain expansion or revenue opportunities that we do not believe are in the best interests of consumers, even if such decisions negatively impact our results of operations in the short term. For example, we phased out our brand advertising products in part because demand in the brand advertising market has shifted toward products disruptive to the consumer experience, such as video ads. Our approach of putting consumers first may negatively impact our relationship with existing or prospective advertisers. For example, unless we believe that a review violates our terms of service, such as reviews that contain hate speech or bigotry, we will allow the review to remain on our platform, even if the business disputes its accuracy. Certain advertisers may therefore perceive us as an impediment to their success as a result of negative reviews and ratings. This practice could result in a loss of advertisers, which in turn could harm our results of operations. However, we believe that this approach has been essential to our success in attracting users and increasing the frequency with which they use our platform. As a result, we believe this approach has served the long-term interests of our company and our stockholders and will continue to do so in the future.

We rely on the performance of highly skilled personnel, and if we are unable to attract, retain and motivate well-qualified employees, our business could be harmed.

We believe our success has depended, and continues to depend, on the efforts and talents of our employees, including our senior management team, software engineers, marketing professionals and advertising sales staff. All of our officers and other U.S. employees are at-will employees, which means they may terminate their employment relationship with us at any time, and their knowledge of our business and industry would be extremely difficult to replace. Any changes in our senior management team in particular may be disruptive to our business. For example, in 2016 we appointed a new Chief Financial Officer, and our long-time Chief Operating Officer stepped down from his position. If our senior management team, including our Chief Financial Officer or any other new hires that we may make, fails to work together effectively or execute our plans and strategies on a timely basis, our business could be harmed.

Our future also depends on our continuing ability to attract, develop, motivate and retain highly qualified and skilled employees. Identifying, recruiting, training and integrating new hires will require significant time, expense and attention, and qualified individuals are in high demand; as a result, we may incur significant costs to attract them before we can validate their productivity. Volatility in the price of our common stock may make it more difficult or costly in the future to use equity compensation to motivate, incentivize and retain our employees. If we fail to manage our hiring needs effectively, our efficiency and ability to meet our forecasts, as well as employee morale, productivity and retention, could suffer, and our business and operating results could be adversely affected.

Risks Related to Our Technology

Our business is dependent on the uninterrupted and proper operation of our technology and network infrastructure. Any significant disruption in our service could damage our reputation, result in a potential loss of users and engagement and adversely affect our results of operations.

It is important to our success that users in all geographies be able to access our platform at all times. We have previously experienced, and may experience in the future, service disruptions, outages and other performance problems. Such performance problems may be due to a variety of factors, including infrastructure changes, human or software errors and capacity constraints due to an overwhelming number of users accessing our platform simultaneously. Our products and services are highly technical and complex, and may contain errors or vulnerabilities that could result in unanticipated downtime for our platform and harm to our reputation and business. Users may also use our products in unanticipated ways that may cause a disruption in service for other users attempting to access our platform. We may encounter such difficulties more frequently as we acquire companies and incorporate their technologies into our service. It may also become increasingly difficult to maintain and improve the availability of our platform, especially during peak usage times, as our products become more complex and our user traffic increases.

In some instances, we may not be able to identify the cause or causes of these performance problems within an acceptable period of time. If our platform is unavailable when users attempt to access it or it does not load as quickly as they expect, users may seek other services to obtain the information for which they are looking, and may not return to our platform as often in the future, or at all. This would negatively impact our ability to attract users and advertisers and increase the frequency with which they use our platform. We expect to continue to make significant investments to maintain and improve the availability of our platform and to enable rapid releases of new features and products. To the extent that we do not effectively address capacity constraints, upgrade our systems as needed and continually develop our technology and network architecture to accommodate actual and anticipated changes in technology, our business and operating results may be harmed.

Our systems are also vulnerable to damage or interruption from catastrophic occurrences such as earthquakes, fires, floods, power losses, telecommunications failures, terrorist attacks and similar events. Our U.S. corporate offices and one of the facilities we lease to house our computer and telecommunications equipment are located in the San Francisco Bay Area, a region known for seismic activity. In addition, acts of terrorism, which may be targeted at metropolitan areas that have higher population densities than rural areas, could cause disruptions in our or our advertisers' businesses or the economy as a whole. We may not have sufficient protection or recovery plans in certain circumstances, such as natural disasters affecting the San Francisco Bay Area, and our business interruption insurance may be insufficient to compensate us for losses that may occur. Our disaster recovery program contemplates transitioning our platform and data to a backup center in the event of a catastrophe. Although this program is functional, if our primary data center shuts down, there will be a period of time that our services will remain shut down while the transition to the back-up data center takes place. During this time, our platform may be unavailable in whole or in part to our users.

If our security measures are compromised, or if our platform is subject to attacks that degrade or deny the ability of users to access our content, users may curtail or stop use of our platform.

Our platform involves the storage and transmission of user and business information, some of which may be private, and security breaches could expose us to a risk of loss of this information, which could result in potential liability and litigation. Computer viruses, break-ins, malware, phishing attacks, attempts to overload servers with denial-of-service or other attacks and similar disruptions from unauthorized use of computer systems have become more prevalent in our industry, have occurred on our systems in the past and are expected to occur periodically on our systems in the future. We may be a particularly compelling target for such attacks as a result of our brand recognition. User and business owner accounts and listing pages could be hacked, hijacked, altered or otherwise claimed or controlled by unauthorized persons. For example, we enable businesses to create free online accounts and claim the business listing pages for each of their business locations. Although we take steps to confirm that the person setting up the account is affiliated with the business, our verification systems could fail to confirm that such person is an authorized representative of the business, or mistakenly allow an unauthorized person to claim the business's listing page. In addition, we face risks associated with security breaches affecting our third-party partners and service providers. A security breach at any such third party could be perceived by consumers as a security breach of our systems and result in negative publicity, damage to our reputation and expose us to other losses.

Although none of the disruptions we have experienced to date have had a material effect on our business, any future disruptions could lead to interruptions, delays or website shutdowns, causing loss of critical data or the unauthorized disclosure or use of personally identifiable or other confidential information. Even if we experience no significant shutdown or no critical data is lost, obtained or misused in connection with an attack, the occurrence of such attack or the perception that we are vulnerable to such attacks may harm our reputation, our ability to retain existing users and our ability to attract new users. Although we have developed systems and processes that are designed to protect our data and prevent data loss and other security breaches, the techniques used to obtain unauthorized access, disable or degrade service or sabotage systems change frequently, often are not recognized until launched against a target or long after, and may originate from less regulated and more remote areas around the world. As a result, these preventative measures may not be adequate and we cannot assure you that they will provide absolute security.

Any or all of these issues could negatively impact our ability to attract new users, deter current users from returning to our platform, cause existing or potential advertisers to cancel their contracts or subject us to third-party lawsuits or other liabilities. For example, we work with a third-party vendor to process credit card payments by users and businesses, and are subject to payment card association operating rules. Compliance with applicable operating rules will not necessarily prevent illegal or improper use of our payment systems, or the theft, loss or misuse of payment information, however. If our security measures fail to prevent fraudulent credit card transactions and protect payment information adequately as a result of employee error, malfeasance or otherwise, or we fail to comply with the applicable operating rules, we could be liable to the users and businesses for their losses, as well as the vendor under our agreement with it, and be subject to fines and higher transaction fees. In addition, government authorities could also initiate legal or regulatory actions against us in connection with such incidents, which could cause us to incur significant expense and liability or result in orders or consent decrees forcing us to modify our business practices.

Some of our products contain open source software, which may pose particular risks to our proprietary software and solutions.

We use open source software in our products and will use open source software in the future. From time to time, we may face claims from third parties claiming ownership of, or demanding release of, the open source software or derivative works that we developed using such software (which could include our proprietary source code), or otherwise seeking to enforce the terms of the applicable open source license. These claims could result in litigation and could require us to purchase a costly license or cease offering the implicated solutions unless and until we can re-engineer them to avoid infringement. This re-engineering process could require significant additional research and development resources. In addition to risks related to license requirements, use of certain open source software can lead to greater risks than use of third-party commercial software because open source licensors generally do not provide warranties or controls on the origin of the software. Any of these risks could be difficult to eliminate or manage, and, if not addressed, could have a negative effect on our business and operating results.

Failure to protect or enforce our intellectual property rights could harm our business and results of operations.

We regard the protection of our trade secrets, copyrights, trademarks, patent rights and domain names as critical to our success. In particular, we must maintain, protect and enhance the “Yelp” brand. We pursue the registration of our domain names, trademarks and service marks in the United States and in certain jurisdictions abroad. While we are pursuing a number of patent applications, we currently have only limited patent protection for our core business, which may make it more difficult to assert certain of our intellectual property rights. We strive to protect our intellectual property rights by relying on federal, state and common law rights, as well as contractual restrictions. We typically enter into confidentiality and invention assignment agreements with our employees and contractors, as well as confidentiality agreements with parties with whom we conduct business in order to limit access to, and disclosure and use of, our proprietary information. However, these contractual arrangements and the other steps we have taken to protect our intellectual property may not prevent the misappropriation or disclosure of our proprietary information or deter independent development of similar technologies by others.

Effective trade secret, copyright, trademark, patent and domain name protection is expensive to develop and maintain, both in terms of initial and ongoing registration requirements and expenses and the costs of defending our rights. Seeking protection for our intellectual property, including trademarks and domain names, is an expensive process and may not be successful, and we may not do so in every location in which we operate. Similarly, the process of obtaining patent protection is expensive and time consuming, and we may not be able to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Even if issued, there can be no assurance that these patents will adequately protect our intellectual property, as the legal standards relating to the validity, enforceability and scope of protection of patent and other intellectual property rights are uncertain. Litigation may become necessary to enforce our patent or other intellectual property rights, protect our trade secrets or determine the validity and scope of proprietary rights claimed by others. For example, we may incur significant costs in enforcing our trademarks against those who attempt to imitate our “Yelp” brand. Any litigation of this nature, regardless of outcome or merit, could result in substantial costs and diversion of management and technical resources, any of which could adversely affect our business and operating results.

We may be unable to continue to use the domain names that we use in our business, or prevent third parties from acquiring and using domain names that infringe on, are similar to, or otherwise decrease the value of our brand or our trademarks or service marks.

We have registered domain names for the websites that we use in our business, such as Yelp.com. If we lose the ability to use a domain name, whether due to trademark claims, failure to renew the applicable registration or any other cause, we may be forced to market our products under a new domain name, which could cause us substantial harm or cause us to incur significant expense in order to purchase rights to the domain name in question. In addition, our competitors and others could attempt to capitalize on our brand recognition by using domain names similar to ours. Domain names similar to ours have been registered by others in the United States and elsewhere. We may be unable to prevent third parties from acquiring and using domain names that infringe on, are similar to or otherwise decrease the value of our brand or our trademarks or service marks. Protecting and enforcing our rights in our domain names may require litigation, which could result in substantial costs and diversion of management’s attention.

Risks Related to Our Financial Statements and Tax Matters

****We have incurred significant operating losses in the past, and we may not be able to generate sufficient revenue to maintain profitability. Our recent growth rate will likely not be sustainable, and a failure to maintain an adequate growth rate will adversely affect our business and results of operations.***

Since our inception, we have incurred significant operating losses and, as of June 30, 2017, we had an accumulated deficit of approximately \$67.4 million. Although our revenues have grown rapidly in the last several years, increasing from \$12.1 million in 2008 to \$713.1 million in 2016, our revenue growth rate has declined in recent periods as a result of a variety of factors, including the maturation of our business and the gradual decline in the number of major geographic markets within the United States and Canada to which we have not already expanded. While our decision to focus our sales and marketing resources primarily on the United States and Canada may result in some cost savings, they also limit the markets from which we generate revenue and our ability to expand internationally in the future. We expect that the more immediate loss of revenue will be immaterial, but we cannot predict the impact of these plans on our long-term international prospects or the impact that a smaller international footprint may have on our brand and reputation.

You should not rely on the revenue growth of any prior quarterly or annual period, or the net income we realize from time to time, as an indication of our future performance. Historically, our costs have increased each year and we expect our costs to increase in future periods as we continue to expend substantial financial resources on:

- sales and marketing;
- our technology infrastructure;
- product and feature development;
- market development efforts;
- strategic opportunities, including commercial relationships and acquisitions;
- our stock repurchase program; and
- general administration, including legal and accounting expenses related to being a public company.

These investments may not result in increased revenue or growth in our business. Our costs may also increase as we hire additional employees, particularly as a result of the significant competition that we face to attract and retain technical talent. Our expenses may grow faster than our revenue and may be greater than we anticipate in a particular period or over time. If we are unable to maintain adequate revenue growth and to manage our expenses, we may continue to incur significant losses in the future and may not be able to maintain profitability.

We have a limited operating history in an evolving industry, which makes it difficult to evaluate our future prospects and may increase the risk that we will not be successful.

We have a limited operating history in an evolving industry that may not develop as expected, if at all. As a result, our historical operating results may not be indicative of our future operating results, making it difficult to assess our future prospects. You should consider our business and prospects in light of the risks and difficulties we may encounter in this rapidly evolving industry, which we may not be able to address successfully. These risks and difficulties include our ability to, among other things:

- increase the number of users of our website and mobile app and the number of reviews and other content on our platform;
- attract and retain new advertising clients, many of which may have limited or no online advertising experience;
- forecast revenue and adjusted EBITDA accurately, which is made more difficult by the large percentage of our revenue derived from performance-based advertising, as well as appropriately estimate and plan our expenses;
- continue to earn and preserve a reputation for providing meaningful and reliable reviews of local businesses;
- effectively monetize our mobile products as usage continues to migrate toward mobile devices;
- successfully compete with existing and future providers of other forms of offline and online advertising;
- successfully compete with other companies that are currently in, or may in the future enter, the business of providing information regarding local businesses;
- successfully manage our growth;
- successfully develop and deploy new features and products;
- manage and integrate successfully any acquisitions of businesses, solutions or technologies, such as Nowait and Turnstyle;
- avoid interruptions or disruptions in our service or slower than expected load times;
- develop a scalable, high-performance technology infrastructure that can efficiently and reliably handle increased usage, as well as the deployment of new features and products;
- hire, integrate and retain talented sales and other personnel;
- effectively manage rapid growth in our sales force, other personnel and operations; and
- effectively identify, engage and manage third-party partners and service providers.

If the demand for information regarding local businesses does not develop as we expect, or if we fail to address the needs of this demand, our business will be harmed. We may not be able to address successfully these risks and difficulties or others, including those described elsewhere in these risk factors. Failure to address these risks and difficulties adequately could harm our business and cause our operating results to suffer.

We expect a number of factors to cause our operating results to fluctuate on a quarterly and annual basis, which may make it difficult to predict our future performance.

Our operating results could vary significantly from period to period as a result of a variety of factors, many of which may be outside of our control. This volatility increases the difficulty in predicting our future performance and means comparing our operating results on a period-to-period basis may not be meaningful. In addition to the other risk factors discussed in this section, factors that may contribute to the volatility of our operating results include:

- changes in the products we offer, such as our phase out of brand advertising products;
- changes in our pricing policies and terms of contracts, whether initiated by us or as a result of competition;
- changes in the markets in which we operate, such as the wind down of our international sales and marketing operations to focus on our core markets of the United States and Canada;
- cyclical and seasonality, which may become more pronounced as our growth rate slows;
- the effects of changes in search engine placement and prominence;
- the adoption of any laws or regulations that adversely affect the growth, popularity or use of the Internet, such as laws impacting Internet neutrality;
- the success of our sales and marketing efforts;
- costs associated with defending intellectual property infringement and other claims and related judgments or settlements;
- interruptions in service and any related impact on our reputation;
- changes in advertiser budgets or the market acceptance of online advertising solutions;
- changes in consumer behavior with respect to local businesses;
- changes in our tax rates or exposure to additional tax liabilities;
- the impact of macroeconomic conditions, including the resulting effect on consumer spending at local businesses and the level of advertising spending by local businesses; and
- the effects of natural or man-made catastrophic events.

****Our reported financial results may be adversely affected by new accounting pronouncements or changes in existing accounting standards and practices.***

We prepare our financial statements in conformity with accounting principles generally accepted in the U.S. (“GAAP”). These accounting principles are subject to interpretation or changes by the Financial Accounting Standards Board (“FASB”) and the SEC. New accounting pronouncements and varying interpretations of accounting standards and practices have occurred in the past and are expected to occur in the future. New accounting pronouncements or a change in the interpretation of existing accounting standards or practices may have a significant effect on our reported financial results. In May 2014, FASB issued Accounting Standards Update 2014-09, “Revenue from Contracts with Customers,” which will supersede existing revenue guidance under GAAP and which we will adopt on January 1, 2018. The new guidance requires companies to recognize revenue when they transfer promised goods or services to customers, in an amount that reflects the consideration that the company expects to be entitled to in exchange for such goods or services. We are still in the process of evaluating the impact of the new revenue standard. Refer to Note 1 of our condensed consolidated financial statements for additional information on the new guidance and its potential impact on us.

Because we recognize most of the revenue from our advertising products over the term of an agreement, a significant downturn in our business may not be immediately reflected in our results of operations.

We recognize revenue from sales of our advertising products over the terms of the applicable agreements, which are generally three, six or 12 months. As a result, a significant portion of the revenue we report in each quarter is generated from agreements entered into during previous quarters. Consequently, a decline in new or renewed agreements in any one quarter may not significantly impact our revenue in that quarter but will negatively affect our revenue in future quarters. In addition, we may be unable to adjust our fixed costs in response to reduced revenue. Accordingly, the effect of significant declines in advertising sales may not be reflected in our short-term results of operations.

If our goodwill or intangible assets become impaired, we may be required to record a significant charge to our income statement.

We have recorded a significant amount of goodwill related to our acquisitions to date, and a significant portion of the purchase price of any companies we acquire in the future may be allocated to acquired goodwill and other intangible assets. Under GAAP, we review our intangible assets for impairment when events or changes in circumstances indicate the carrying value of our goodwill and other intangible assets may not be recoverable. Goodwill is required to be tested for impairment at least annually. Factors that may be considered include declines in our stock price, market capitalization and future cash flow projections. If our acquisitions do not yield expected returns, our stock price declines or any other adverse change in market conditions occurs, a change to the estimation of fair value could result. Any such change could result in an impairment charge to our goodwill and intangible assets, particularly if such change impacts any of our critical assumptions or estimates, and may have a negative impact on our financial position and operating results.

We may require additional capital to support business growth, and such capital might not be available on acceptable terms, if at all.

We intend to continue to invest in our business and may require or otherwise seek additional funds to respond to business challenges, including the need to develop new features and products, enhance our existing services, improve our operating infrastructure and acquire complementary businesses and technologies. In addition, on July 31, 2017, our board of directors authorized the repurchase of up to \$200 million of our common stock. As a result, we may need to engage in equity or debt financings to secure additional funds. If we raise additional funds through future issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of our common stock. Any future debt financing we secure could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. We may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and respond to business challenges could be significantly impaired, and our business may be harmed.

We may have exposure to greater than anticipated tax liabilities.

Our income tax obligations are based in part on our corporate operating structure and intercompany arrangements, including the manner in which we develop, value and use our intellectual property and the valuations of our intercompany transactions. For example, our corporate structure includes legal entities located in jurisdictions with income tax rates lower than the U.S. statutory tax rate. Our intercompany arrangements allocate income to such entities in accordance with arm's length principles and commensurate with functions performed, risks assumed and ownership of valuable corporate assets. We believe that income taxed in certain foreign jurisdictions at a lower rate relative to the U.S. statutory rate will have a beneficial impact on our worldwide effective tax rate.

However, significant judgment is required in evaluating our tax positions and determining our provision for income taxes. During the ordinary course of business, there are many transactions and calculations for which the ultimate tax determination is uncertain. For example, our effective tax rates could be adversely affected by earnings being lower than anticipated in countries where we have lower statutory rates and higher than anticipated in countries where we have higher statutory rates, by changes in foreign currency exchange rates or by changes in the relevant tax, accounting and other laws, regulations, principles and interpretations.

In addition, the application of the tax laws of various jurisdictions, including the United States, to our international business activities is subject to interpretation and depends on our ability to operate our business in a manner consistent with our corporate structure and intercompany arrangements. The taxing authorities of jurisdictions in which we operate may challenge our methodologies for valuing developed technology or intercompany arrangements, including our transfer pricing, or determine that the manner in which we operate our business does not achieve the intended tax consequences, which could increase our worldwide effective tax rate and harm our financial position and results of operations. As we operate in numerous taxing jurisdictions, the application of tax laws can also be subject to diverging and sometimes conflicting interpretations by tax authorities of these jurisdictions. It is not uncommon for taxing authorities in different countries to have conflicting views, for instance, with respect to, among other things, the manner in which the arm's-length standard is applied for transfer pricing purposes, or with respect to the valuation of intellectual property.

****Changes in tax laws or tax rulings, or the examination of our tax positions, could materially affect our financial position and results of operations.***

Tax laws are dynamic and subject to change as new laws are passed and new interpretations of the law are issued or applied. Our current practices, existing corporate structure and intercompany arrangements have been implemented in a manner we believe is in compliance with current prevailing tax laws. However, the tax benefits that we intend to eventually derive could be undermined due to changing tax laws or new interpretations of existing laws that are inconsistent with previous interpretations or positions taken by taxing authorities on which we have relied. In particular, the current U.S. administration and key members of Congress have made public statements indicating that tax reform is a priority, resulting in uncertainty not only with respect to the future corporate tax rate, but also the U.S. tax consequences of income derived from income related to intellectual property earned overseas in low tax jurisdictions. Certain changes to U.S. tax laws, including limitations on the ability to defer U.S. taxation on earnings outside of the United States until those earnings are repatriated to the United States, as well as changes to U.S. tax laws that may be enacted in the future, could affect the tax treatment of our foreign earnings. In addition, the taxing authorities in the United States and other jurisdictions where we do business regularly examine our income and other tax returns. The ultimate outcome of these examinations cannot be predicted with certainty. Should the IRS or other taxing authorities assess additional taxes as a result of examinations or changes to applicable law or interpretations of the law, we may be required to record charges to our operations, which could harm our business, operating results and financial condition.

Our business and results of operations may be harmed if we are deemed responsible for the collection and remittance of state sales taxes for Eat24's restaurants.

If we are deemed an agent for the restaurants in our Eat24 network under state tax law, we may be deemed responsible for collecting and remitting sales taxes directly to certain states. It is possible that one or more states could seek to impose sales, use or other tax collection obligations on us with regard to such food sales. These taxes may be applicable to past sales. A successful assertion that we should be collecting additional sales, use or other taxes or remitting such taxes directly to states could result in substantial tax liabilities for past sales and additional administrative expenses, which would harm our business and results of operations. In addition, we rely on the restaurants in our Eat24 network to provide us with the correct sales tax rates for each individual order. If such information proves incorrect, we may be liable for the under or over collection of sales tax from Eat24 customers.

****We rely on data from both internal tools and third parties to calculate certain of our performance metrics. Real or perceived inaccuracies in such metrics may harm our reputation and negatively affect our business.***

We track certain performance metrics — including the number of unique devices accessing our mobile app in a given period, page views and calls and clicks for directions and map views — with internal tools, which are not independently verified by any third party. Our internal tools have a number of limitations and our methodologies for tracking these metrics may change over time, which could result in unexpected changes to our metrics, including key metrics that we report. For example, our metrics may be affected by mobile applications that automatically contact our servers for regular updates with no discernible user action involved; this activity can cause our system to count the device associated with the app as an app unique device in a given period. If the internal tools we use to track these metrics over- or under-count performance or contain algorithm or other technical errors, the data we report may not be accurate. In addition, limitations or errors with respect to how we measure data may affect our understanding of certain details of our business, which could affect our longer-term strategies.

In addition, certain of our key metrics — the number of our desktop unique visitors and mobile website unique visitors — are calculated relying on data from third parties. While these numbers are based on what we believe to be reasonable calculations for the applicable periods of measurement, our third-party providers periodically encounter difficulties in providing accurate data for such metrics as a result of a variety of factors, including human and software errors. We expect these challenges to continue to occur, and potentially to increase as our traffic grows. For example, we recently discovered that a portion of our desktop traffic, as measured by Google Analytics, since the third quarter of 2016 has been attributable to a single robot. Because the traffic from this robot does not represent valid consumer traffic, we determined that our reported desktop unique visitors metric for the third quarter of 2016, fourth quarter of 2016 and first quarter of 2017 were overstated, and have adjusted them to provide greater accuracy and transparency. Our reported number of desktop unique visitors for the second quarter of 2017 also reflects an adjustment to the number provided by Google Analytics to account for this robot, and we expect to continue to make similar adjustments in the future if we determine that our traffic metrics are materially impacted by robot or other invalid traffic.

There are also inherent challenges in measuring usage across our large user base. For example, because these metrics are based on users with unique cookies, an individual who accesses our website from multiple devices with different cookies may be counted as multiple unique visitors, and multiple individuals who access our website from a shared device with a single cookie may be counted as a single unique visitor. In addition, although we use technology designed to block low-quality traffic, such as robots, spiders and other software, we may not be able to prevent all such traffic, and such technology may have the effect of blocking some valid traffic. For these and other reasons, the calculations of our desktop unique visitors and mobile website unique visitors may not accurately reflect the number of people actually using our platform.

Our measures of traffic and other key metrics may differ from estimates published by third parties (other than those whose data we use to calculate our key metrics) or from similar metrics of our competitors. We are continually seeking to improve our ability to measure these key metrics, and regularly review our processes to assess potential improvements to their accuracy. However, if our users, advertisers, partners and stockholders do not perceive our metrics to be accurate representations, or if we discover material inaccuracies in our metrics, our reputation may be harmed.

Risks Related to Regulatory Compliance and Legal Matters

We are, and may be in the future, subject to disputes and assertions by third parties that we violate their rights. These disputes may be costly to defend and could harm our business and operating results.

We currently face, and we expect to face from time to time in the future, allegations that we have violated the rights of third parties, including patent, trademark, copyright and other intellectual property rights, and the rights of current and former employees, users and business owners. For example, various businesses have sued us alleging that we manipulate Yelp reviews in order to coerce them and other businesses to pay for Yelp advertising. The nature of our business also exposes us to claims relating to the information posted on our platform, including claims for defamation, libel, negligence and copyright or trademark infringement, among others. Businesses have in the past claimed, and may in the future claim, that we are responsible for the defamatory reviews posted by our users. We expect claims like these to continue, and potentially increase in proportion to the amount of content on our platform. In some instances, we may elect or be compelled to remove the content that is the subject of such claims, or may be forced to pay substantial damages if we are unsuccessful in our efforts to defend against these claims. If we elect or are compelled to remove content from our platform, our products and services may become less useful to consumers and our traffic may decline, which would have a negative impact on our business.

We are also regularly exposed to claims based on allegations of infringement or other violations of intellectual property rights. Companies in the Internet, technology and media industries own large numbers of patent and other intellectual property rights, and frequently enter into litigation. Various “non-practicing entities” that own patents and other intellectual property rights also often aggressively attempt to assert their rights in order to extract value from technology companies. From time to time, we receive notice letters from patent holders alleging that certain of our products and services infringe their patent rights, and we are presently involved in numerous patent lawsuits, including lawsuits involving plaintiffs targeting multiple defendants in the same or similar suits. While we are pursuing a number of patent applications, we currently have only limited patent protection for our core business, and the contractual restrictions and trade secrets that protect our proprietary technology provide only limited safeguards against infringement. This may make it more difficult to defend certain of our intellectual property rights, particularly related to our core business.

We expect other claims to be made against us in the future, and as we face increasing competition and gain an increasingly high profile, we expect the number of claims against us to accelerate. The results of litigation and claims to which we may be subject cannot be predicted with any certainty. Even if the claims are without merit, the costs associated with defending against them may be substantial in terms of time, money and management distraction. In particular, patent and other intellectual property litigation may be protracted and expensive, and the results may require us to stop offering certain features, purchase licenses or modify our products and features while we develop non-infringing substitutes, or otherwise involve significant settlement costs. The development of alternative non-infringing technology or practices could require significant effort and expense or may not be feasible. Even if claims do not result in litigation or are resolved in our favor without significant cash settlements, such matters, and the time and resources necessary to resolve them, could harm our business, results of operations and reputation.

****Our business is subject to complex and evolving U.S. and foreign regulations and other legal obligations related to privacy, data protection and other matters. Our actual or perceived failure to comply with such regulations and obligations could harm our business.***

We are subject to a variety of laws in the United States and abroad that involve matters central to our business, including laws regarding privacy, data retention, distribution of user-generated content and consumer protection, among others. For example, because we receive, store and process personal information and other user data, including credit card information, we are subject to numerous federal, state and local laws around the world regarding privacy and the storing, sharing, use, processing, disclosure and protection of personal information and other user data. We are also subject to a variety of laws, regulations and guidelines that regulate the way we distinguish paid search results and other types of advertising from unpaid search results.

The application and interpretation of these laws and regulations are often uncertain, particularly in the new and rapidly evolving industry in which we operate. For example, we rely on laws limiting the liability of providers of online services for activities of their users and other third parties. These laws are currently being tested by a number of claims, including actions based on invasion of privacy and other torts, unfair competition, copyright and trademark infringement and other theories based on the nature and content of the materials searched, the ads posted or the content provided by users. It is difficult to predict how existing laws will be applied to our business, and if our business grows and evolves and our solutions are used in a greater number of countries, we will also become subject to laws and regulations in additional jurisdictions, which may be inconsistent with the laws of the jurisdictions to which we are currently subject. For example, the risk related to liability for third-party actions may be greater in certain jurisdictions outside the United States where our protection from such liability may be unclear.

It is also possible that the interpretation and application of various laws and regulations may conflict with other rules or our practices, such as industry standards to which we adhere, our privacy policies and our privacy-related obligations to third parties (including, in certain instances, voluntary third-party certification bodies). Similarly, our business could be adversely affected if new legislation or regulations are adopted that require us to change our current practices or the design of our platform, products or features. For example, regulatory frameworks for privacy issues are currently in flux worldwide, and are likely to remain so for the foreseeable future due to increased public scrutiny of the practices of companies offering online services with respect to personal information of their users. The U.S. government, including the Federal Trade Commission and the Department of Commerce, and many state governments are reviewing the need for greater regulation of the collection, processing, storage and use of information about consumer behavior on the Internet, including regulation aimed at restricting certain targeted advertising practices. The European Commission recently approved a new safe harbor program, the E.U.-U.S. Privacy Shield, covering the transfer of personal data from the European Union to the United States, and a new general data protection regulation is expected to take effect in the European Union by 2018, each of which may be subject to varying interpretations and evolving practices, which would create uncertainty for us and possibly result in significantly greater compliance burdens for companies such as us with users and operations in Europe. Changes like these could increase our administrative costs and make it more difficult for consumers to use our platform, resulting in less traffic and revenue. Such changes could also make it more difficult for us to provide effective advertising tools to businesses on our platform, resulting in fewer advertisers and less revenue.

We believe that our policies and practices comply with applicable laws and regulations. However, if our belief proves incorrect, if these guidelines, laws or regulations or their interpretations change or new legislation or regulations are enacted, or if the third parties with whom we share user information fail to comply with such guidelines, laws, regulations or their contractual obligations to us, we may be forced to implement new measures to reduce our legal exposure. This may require us to expend substantial resources, delay development of new products or discontinue certain products or features, which would negatively impact our business. For example, if we fail to comply with our privacy-related obligations to users or third parties, or any compromise of security that results in the unauthorized release or transfer of personally identifiable information or other user data, we may be compelled to provide additional disclosures to our users, obtain additional consents from our users before collecting or using their information or implement new safeguards to help our users manage our use of their information, among other changes. We may also face litigation, governmental enforcement actions or negative publicity, which could cause our users and advertisers to lose trust in us and have an adverse effect on our business. For example, from time to time we receive inquiries from government agencies regarding our business practices. Although the internal resources expended and expenses incurred in connection with such inquiries and their resolutions have not been material to date, any resulting negative publicity could adversely affect our reputation and brand. Responding to and resolving any future litigation, investigations, settlements or other regulatory actions may require significant time and resources, and could diminish confidence in and the use of our products.

Domestic and certain foreign laws may be interpreted and enforced in ways that impose new obligations on us with respect to Yelp Deals, which may harm our business and results of operations.

Our Yelp Deals products may be deemed gift certificates, store gift cards, general-use prepaid cards or other vouchers, or “gift cards,” subject to, among other laws, the federal Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “Credit CARD Act”) and similar state and foreign laws. Many of these laws include specific disclosure requirements and prohibitions or limitations on the use of expiration dates and the imposition of certain fees. Various companies that provide deal products similar to ours have been subject to allegations that their deal products are subject to and violate the Credit CARD Act and various state laws governing gift cards. Lawsuits have also been filed in other locations in which we sell or plan to sell our Yelp Deals, such as the Canadian province of Ontario, alleging similar violations of provincial legislation governing gift cards.

The application of various other laws and regulations to our products, and particularly our Yelp Deals and Gift Certificates, is uncertain. These include laws and regulations pertaining to unclaimed and abandoned property, partial redemption, refunds, revenue-sharing restrictions on certain trade groups and professions, sales and other local taxes and the sale of alcoholic beverages. In addition, we may become, or be determined to be, subject to federal, state or foreign laws regulating money transmitters or aimed at preventing money laundering or terrorist financing, including the Bank Secrecy Act, the USA PATRIOT Act and other similar future laws or regulations.

If we become subject to claims or are required to alter our business practices as a result of current or future laws and regulations, our revenue could decrease, our costs could increase and our business could otherwise be harmed. In addition, the costs and expenses associated with defending any actions related to such additional laws and regulations and any payments of related penalties, fines, judgments or settlements could harm our business.

The requirements of being a public company may strain our resources, divert management’s attention and affect our ability to attract and retain qualified board members.

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Act, the listing requirements of the New York Stock Exchange and other applicable securities rules and regulations. Compliance with these rules and regulations has increased, and will likely continue to increase, our legal and financial compliance costs, make some activities more difficult, time-consuming or costly, and place significant strain on our personnel, systems and resources. In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time. This could result in continuing uncertainty regarding compliance matters, higher administrative expenses and a diversion of management’s time and attention. Further, if our compliance efforts differ from the activities intended by regulatory or governing bodies due to ambiguities related to practice, regulatory authorities may initiate legal proceedings against us and our business may be harmed. Being a public company that is subject to these rules and regulations also makes it more expensive for us to obtain and retain director and officer liability insurance, and we may in the future be required to accept reduced coverage or incur substantially higher costs to obtain or retain adequate coverage. These factors could also make it more difficult for us to attract and retain qualified members of our board of directors and qualified executive officers.

Risks Related to Ownership of Our Common Stock

****Our share price has been and will likely continue to be volatile.***

The trading price of our common stock has been, and is likely to continue to be, highly volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. During 2016, our common stock's daily closing price ranged from \$15.23 to \$42.16, and was \$32.53 on July 31, 2017. In addition to the factors discussed in this "Risk Factors" section and elsewhere in this Quarterly Report, factors that may cause volatility in our share price include:

- actual or anticipated fluctuations in our financial condition and operating results;
- changes in projected operating and financial results;
- actual or anticipated changes in our growth rate relative to our competitors;
- repurchase of our common stock pursuant to our stock repurchase program, which could also cause our stock price to be higher than it would be in the absence of such a program and could potentially reduce the market liquidity for our stock;
- announcements of changes in strategy, such as the announcement of our plan to wind down our international sales and marketing operations to focus on our core U.S. and Canadian markets;
- announcements of technological innovations or new offerings by us or our competitors;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital-raising activities or commitments;
- additions or departures of key personnel;
- actions of securities analysts who cover our company, such as publishing research or forecasts about our business (and our performance against such forecasts), changing the rating of our common stock or ceasing coverage of our company;
- investor sentiment with respect to our competitors, business partners and industry in general;
- reporting on our business by the financial media, including television, radio and press reports and blogs;
- fluctuations in the value of companies perceived by investors to be comparable to us;
- changes in the way we measure our key metrics;
- sales of our common stock;
- changes in laws or regulations applicable to our solutions;
- share price and volume fluctuations attributable to inconsistent trading volume levels of our shares; and
- general economic and market conditions such as recessions or interest rate changes.

Furthermore, the stock markets have recently experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. In the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. For example, in August 2014, we and certain of our officers were sued in two similar putative class action lawsuits alleging violations of the federal securities laws for allegedly making materially false and misleading statements. We may be the target of additional litigation of this type in the future as well. Securities litigation against us could result in substantial costs and divert our management's time and attention from other business concerns, which could harm our business.

We do not intend to pay dividends for the foreseeable future, and as a result, our stockholders' ability to achieve a return on their investment will depend on appreciation in the price of our common stock.

We have never declared or paid any cash dividends on our common stock and do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors. Accordingly, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize future gains on their investments.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of our Company more difficult, limit attempts by our stockholders to replace or remove our current management and limit the market price of our common stock.

Provisions in our certificate of incorporation and bylaws may have the effect of delaying or preventing a change in control or changes in our management. Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that:

- authorize our board of directors to issue, without further action by the stockholders, up to 10,000,000 shares of undesignated preferred stock;
- require that any action to be taken by our stockholders be effected at a duly called annual or special meeting and not by written consent;
- specify that special meetings of our stockholders can be called only by our board of directors, the Chair of our board of directors or our Chief Executive Officer;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our board of directors;
- establish that our board of directors is divided into three classes, with directors in each class serving three-year staggered terms;
- prohibit cumulative voting in the election of directors;
- provide that vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum; and
- require the approval of our board of directors or the holders of a supermajority of our outstanding shares of capital stock to amend our bylaws and certain provisions of our certificate of incorporation.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any “interested” stockholder for a period of three years following the date on which the stockholder became an “interested” stockholder.

****Future sales of our common stock in the public market could cause our share price to decline.***

Sales of a substantial number of shares of our common stock in the public market, particularly sales by our directors, officers, employees and significant stockholders, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. As of June 30, 2017, we had 81,752,997 shares of common stock outstanding.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

A list of exhibits filed with this report or incorporated herein by reference is found in the Exhibit Index immediately following the signature page of this report and is incorporated into this Item 6 by reference.

SIGNATURES

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

YELP INC.

Date: August 9, 2017

/s/ Charles Baker

Charles Baker

Chief Financial Officer

(Principal Financial and Accounting Officer and Duly Authorized Signatory)

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated by Reference</u>				<u>Filed Herewith</u>
		<u>Form</u>	<u>File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>	
2.1	Agreement and Plan of Merger, dated February 28, 2017, by and among Yelp Inc., Nowait, Inc., Beagle Acquisition Corp. and Shareholder Representative Services LLC, as Stockholders' Agent.	8-K	001-35444	2.1	3/6/2017	
2.2	Share Purchase Agreement, dated April 3, 2017, by and among Yelp Inc., 10036773 Canada Inc., Turnstyle Analytics Inc., the shareholders of Turnstyle Analytics Inc., the vested option holders of Turnstyle Analytics Inc., 500 Startups IV, L.P. and Fortis Advisors LLC, as Securityholders' Agent.	8-K	001-35444	2.1	4/7/2016	
2.3	Unit Purchase Agreement, dated as of August 3, 2017, by and among Yelp Inc., Eat24, LLC, Grubhub Inc. and Grubhub Holdings Inc.					X
3.1	Amended and Restated Certificate of Incorporation of Yelp Inc.	8-A/A	001-35444	3.2	9/23/2016	
3.2	Amended and Restated Bylaws of Yelp Inc.	S-1/A	333-178030	3.4	2/3/2012	
4.1	Reference is made to Exhibits 3.1 and 3.2.					
4.2	Form of Common Stock Certificate.	8-A/A	001-35444	4.1	9/23/2016	
31.1	Certification pursuant to Rule 13a-14(a)/15d-14(a).					X
31.2	Certification pursuant to Rule 13a-14(a)/15d-14(a).					X
32.1†	Certifications of Chief Executive Officer and Chief Financial Officer.					X
101.INS	XBRL Instance Document.					X
101.SCH	XBRL Taxonomy Extension Schema Document.					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	XBRL Taxonomy Extension Labels Linkbase Document.					X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.					X
†	The certifications attached as Exhibit 32.1 accompany this Quarterly Report on Form 10-Q, are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Yelp Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.					

UNIT PURCHASE AGREEMENT

among

YELP INC.,

EAT24, LLC,

GRUBHUB INC.

and

GRUBHUB HOLDINGS INC.

Dated as of August 3, 2017

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Exhibit A Form of Asset Transfer Agreement
Exhibit B Marketing Partnership Agreement
Exhibit C Form of Escrow Agreement
Exhibit D Form of Transition Services Agreement
Exhibit E Form of Seller Release

UNIT PURCHASE AGREEMENT

UNIT PURCHASE AGREEMENT dated as of August 3, 2017 (this “Agreement”), by and among YELP INC. , a Delaware corporation (“Seller”), EAT24, LLC, a Delaware limited liability company (the “Company”), GRUBHUB INC., a Delaware corporation (“Parent”), and GRUBHUB HOLDINGS INC., a Delaware corporation (“Purchaser”). Section 11.06(b) sets forth the definitions of certain capitalized terms used but not otherwise defined herein, and Section 11.06(c) sets forth an index of certain capitalized terms used herein.

WHEREAS, Seller owns beneficially and of record all of the issued and outstanding units of membership interests of the Company (the “Units”);

WHEREAS, prior to the Closing, Seller and the Company shall cause the Asset Transfer to be effected in accordance with the Asset Transfer Agreement by and between the Company, Seller and each Seller Subsidiary party thereto in the form attached hereto as Exhibit A (the “Asset Transfer Agreement”);

WHEREAS, at the Closing, upon the terms and subject to the conditions set forth in this Agreement, Seller desires to sell and transfer to Purchaser, and Purchaser desires to purchase, assume and accept from Seller, the Units (the “Acquisition”); and

WHEREAS, concurrently with the execution hereof, Seller and Purchaser are entering into the Marketing Partnership Agreement in the form attached hereto as Exhibit B (the “Marketing Partnership Agreement”), which agreement shall go into effect only upon the Closing in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound, hereby agree as follows:

ARTICLE I

Asset Transfer, Purchase and Sale of the Units

SECTION 1.01. Asset Transfer. Upon the terms and subject to the conditions of this Agreement and the Asset Transfer Agreement, Seller shall, or shall cause the applicable Seller Companies to, transfer the Transferred Assets to the Company (the “Asset Transfer”) immediately prior to the Closing.

SECTION 1.02. Purchase and Sale. Following the consummation of the Asset Transfer, upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase, acquire and accept from Seller, all of the rights, title and interest of Seller in, to and under the Units, free and clear of all Liens, for an aggregate purchase price equal to the Closing Date Purchase Price, payable and subject to adjustment as set forth in Article II.

ARTICLE II

Closing; Purchase Price Adjustment

SECTION 2.01. Closing.

(a) The closing of the Acquisition (the “Closing”) shall be held at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, at 10:00 a.m., New York City time, on the third (3rd) Business Day following the satisfaction (or, to the extent permitted by applicable Law, waiver) of the conditions set forth in Article VIII (other than (i) delivery of items to be delivered at the Closing and (ii) satisfaction of conditions that by their nature are to be satisfied at the Closing, it being understood that the occurrence of the Closing shall remain subject to the delivery of such items and the satisfaction of such conditions at the Closing), or at such other place, time and date as shall be agreed between Purchaser and Seller. The date on which the Closing takes place is referred to in this Agreement as the “Closing Date”. The Closing shall be deemed to be effective as of 12:01 a.m., New York City time, on the Closing Date (the “Effective Time”).

(b) At or prior to the Closing, Seller and/or the Company shall deliver or cause to be delivered to Purchaser:

(i) a certificate of transfer with respect to the Units duly endorsed by Seller;

(ii) the certificate required to be delivered pursuant to Section 8.01(a);

(iii) the Transition Services Agreement, duly executed by Seller;

(iv) the Escrow Agreement, duly executed by Seller;

(v) (x) a certificate, duly completed and executed as of the Closing Date, certifying that Seller is not a foreign person, substantially in the form of the sample set forth in Treasury Regulations Section 1.1445-2(b)(2)(iv)(B), and (y) and IRS Form W-9;

(vi) the Seller Release, duly executed by Seller;

(vii) written resignations, effective immediately after the Closing, of all members of the board of managers and officers of the Company or such other evidence reasonably satisfactory to Purchaser confirming that such persons shall no longer be members of the board of managers or officers, as applicable, of the Company; and

(viii) the Closing Date Financing Deliverables.

(c) At the Closing, Purchaser shall deliver or cause to be delivered to Seller and the Company:

- (i) by wire transfer of immediately available funds to a bank account that is designated in writing by Seller at least two (2) Business Days prior to the Closing Date, an amount equal to the Closing Date Purchase Price less the Escrow Amount;
- (ii) by wire transfer of immediately available funds, the Escrow Amount to the Escrow Agent pursuant to the Escrow Agreement;
- (iii) the certificate required to be delivered pursuant to Section 8.02(a);
- (iv) the Transition Services Agreement, duly executed by Purchaser; and
- (v) the Escrow Agreement, duly executed by Purchaser and the Escrow Agent.

SECTION 2.02. Purchase Price Adjustment.

(a) Not less than four (4) Business Days prior to the Closing Date, Seller shall prepare and deliver to Purchaser a statement (the “Estimated Statement”) setting forth Seller’s good faith estimated calculation of the Closing Date Purchase Price, including (i) the Closing Date Upward Working Capital Adjustment, (ii) the Closing Date Downward Working Capital Adjustment, (iii) the Closing Date Indebtedness Estimate and (iv) the Closing Date Selling Expenses Estimate (collectively, the “Closing Date Purchase Price Elements”), together with reasonable supporting detail and documentation. Each of the Closing Date Purchase Price Elements shall be determined in a manner consistent with and in accordance with the Statement Principles. Seller shall revise the Estimated Statement to reflect any changes reasonably proposed by Purchaser which shall be provided to Seller no later than two (2) Business Days following the delivery of the Estimated Statement.

(b) Within ninety (90) days after the Closing Date, Purchaser shall prepare and deliver to Seller a statement (the “Statement”) setting forth its calculation of the Final Purchase Price, including its determination of (i) the Final Upward Working Capital Adjustment, (ii) the Final Downward Working Capital Adjustment, (iii) the Final Indebtedness and (iv) the Final Selling Expenses (collectively, the “Final Purchase Price Elements”). Each of the Final Purchase Price Elements shall be determined (x) in a manner consistent and in accordance with the Statement Principles and without duplication of any item and (y) without giving effect to any adjustments resulting from the consummation of the transactions contemplated herein (other than Selling Expenses incurred as a result of the Closing and the Asset Transfer, which for the avoidance of doubt, shall be reflected in the Final Purchase Price Elements) or any actions taken by or on behalf of Purchaser with respect to the Company at or following the Closing.

(c) The Statement shall become final and binding upon Seller and Purchaser and used for the purposes of calculating the adjustment pursuant to Section 2.02(d) and Section 2.02(e) on the thirtieth (30th) day following delivery thereof, unless Seller gives written notice to Purchaser of its disagreement with the Statement and any Final Purchase Price Element set forth in the Statement (a “Notice of Disagreement”) prior to such date. Any Notice of Disagreement shall be signed by an authorized officer of Seller and shall (i) specify in reasonable detail the nature of any disagreement so asserted, (ii) include only disagreements based on mathematical errors or based on any Final Purchase Price Element not being calculated in accordance with the definition thereof or the Statement Principles, as applicable, and this Section 2.02 and (iii) specify the amount that Seller reasonably believes is the correct amount of such Final Purchase Price Element based on the disagreements set forth in the Notice of Disagreement, including a reasonably detailed description of the adjustments applied to the Statement in calculating such amount. If the Notice of Disagreement is delivered by Seller prior to the expiration of such thirty (30)-day period, then the Statement (as revised in accordance with this Section 2.02) shall become final and binding upon Seller and Purchaser on the earlier of (A) the date Seller and Purchaser resolve in writing all differences they have with respect to the matters specified in the Notice of Disagreement and (B) the date all disputed matters are finally resolved in writing by the Accounting Firm. During the thirty (30)-day period following the delivery of a Notice of Disagreement, Seller and Purchaser shall seek in good faith to resolve in writing any differences that they have with respect to the matters specified in the Notice of Disagreement and agree on a final and binding determination of such disputed Purchase Price Element(s). During such period, Purchaser and its independent auditors shall be permitted to review the working papers of Seller and its independent auditors prepared in connection with the Notice of Disagreement. At the end of such thirty (30)-day period, if no agreement on any such disputed Purchase Price Element(s) has been reached, then Seller and Purchaser shall submit in writing their positions with respect to any and all matters that remain in dispute and that were properly included in the Notice of Disagreement to an internationally recognized independent accounting firm (the “Accounting Firm”) for resolution of any and all such matters in accordance with the terms of this Agreement. The Accounting Firm shall be Ernst & Young or, if such firm is unable or unwilling to act, such other Big Four accounting firm as shall be agreed upon by Seller and Purchaser in writing or, if the parties are unable to so agree in writing within ten (10) days after the end of such thirty (30)-day period, then Seller and Purchaser shall each select an internationally recognized independent accounting firm and such firms shall jointly select a third internationally recognized independent public accounting firm to resolve the disputed matters. Seller and Purchaser shall jointly instruct the Accounting Firm that it (1) shall act as an expert and not as an arbitrator, (2) shall review only the matters that were properly included in the Notice of Disagreement and which remain in dispute, (3) shall make its determination in accordance with the requirements of this Section 2.02 and based solely on the written submissions of Seller and Purchaser and their respective independent auditors and not by independent review, (4) shall not assign a value for any item that remains in dispute that is greater than the greatest value, or smaller than the smallest value, set forth by either Seller or Purchaser in their written submissions to the Accounting Firm and (5) shall render its written decision as promptly as practicable, but in no event later than thirty (30) days after submission to the Accounting Firm of all matters in dispute. Judgment may be entered upon the determination of the Accounting Firm in any court having jurisdiction over the party against which such determination is to be enforced. The fees and expenses of the Accounting Firm pursuant to this Section 2.02 shall be borne by Seller and Purchaser in inverse proportion as they may prevail on matters resolved by the Accounting Firm, which proportionate allocations also shall be determined by the Accounting Firm at the time the determination of the Accounting Firm is rendered on the merits of the matters submitted. The fees, costs and expenses of Purchaser incurred in connection with its preparation of the Statement, its review of any Notice of Disagreement and its preparation of any written submissions to the Accounting Firm shall be borne by Purchaser, and the fees, costs and expenses of Seller incurred in connection with its review of the Statement, its preparation of any Notice of Disagreement and its preparation of any written submissions to the Accounting Firm shall be borne by Seller. All determinations made by the Accounting Firm will be final, conclusive and binding on the parties to this Agreement. Notwithstanding anything herein to the contrary, the dispute resolution mechanism contained in this Section 2.02(c) shall be the exclusive mechanism for resolving disputes regarding any adjustments to the Closing Date Purchase Price.

(d) If the Closing Date Purchase Price is less than the Final Purchase Price, Purchaser shall, and if the Final Purchase Price is less than the Closing Date Purchase Price, Seller shall, within five (5) Business Days after the Statement becomes final and binding on Seller and Purchaser pursuant to Section 2.02(c), make payment by wire transfer in immediately available funds of the amount of such difference to an account designated by the recipient of such payment.

(e) Each line item of the Closing Working Capital shall be calculated (i) in the same manner, using the same Accounting Policies as the corresponding line item of the Target Working Capital set forth in the sample calculation set forth on Section 2.02(e) of the Seller Disclosure Schedule was calculated, and (ii) without giving effect to the Acquisition or any other transaction contemplated by this Agreement (but, for the avoidance of doubt, giving effect to the Asset Transfer and taking into account Selling Expenses incurred as a result of the Closing). The foregoing principles are referred to in this Agreement as the “Statement Principles”. The Purchase Price adjustment contemplated by this Section 2.02 can only be effected as intended by Seller and Purchaser if the calculations of the Target Working Capital and the Closing Working Capital are done in the same manner, using the same Accounting Policies, in accordance with the sample calculations set forth on Section 2.02(e) of the Seller Disclosure Schedule. The scope of the disputes to be resolved by the Accounting Firm shall be limited to whether there were mathematical errors in the Statement and whether the calculation of the Final Purchase Price Elements was done in accordance with the respective definitions thereof or the Statement Principles, as applicable, and this Section 2.02, and the Accounting Firm is not authorized or permitted to make any other determination, including any determination as to whether the Accounting Policies were followed in calculating the Target Working Capital set forth in the sample calculation set forth on Section 2.02(e) of the Seller Disclosure Schedule, the Final Purchase Price Elements or the Statement or as to whether the Target Working Capital set forth in the sample calculation set forth on Section 2.02(e) of the Seller Disclosure Schedule is correct.

(f) Until the date on which the Statement shall become final and binding on the parties pursuant to Section 2.02(c), each of Seller and Purchaser agrees that, following the Closing, it shall afford and cause to be afforded to the other party and any accountants, counsel or financial advisors retained by such other party in connection with any adjustment to the Purchase Price contemplated by this Section 2.02, access upon reasonable notice during normal business hours to their respective properties, books, contracts, personnel and Records to the extent relating to the Company, and its respective accountants’ work papers relevant to the preparation of the Statement, any Notice of Disagreement and the adjustment contemplated by this Section 2.02 and shall provide such other party, upon such other party’s reasonable request and at such other party’s expense, with copies of any such books, contracts, Records and work papers.

SECTION 2.03. Withholding. Purchaser shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to Seller or any other person such amounts as Purchaser is required to deduct and withhold under the Code, or any applicable Tax Law, with respect to the making of such payment. To the extent that amounts are so withheld and paid to the applicable Taxing Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the person in respect of which such deduction and withholding was made.

SECTION 2.04. Allocation of Purchase Price.

(a) As soon as practicable, but no later than sixty (60) days after the determination of the Final Purchase Price pursuant to Section 2.02, Purchaser shall prepare an allocation of the Final Purchase Price (and any and other relevant items for U.S. federal and applicable state and local income Tax purposes) among the assets of the Company, based on the fair market value of such assets immediately prior to the Closing (the “Allocation”). The Allocation shall be consistent with Section 1060 of the Code, the Treasury Regulations promulgated thereunder, and any analogous provisions of state, local or non-U.S. Law. Purchaser and Seller will cooperate with each other in good faith in preparing the Allocation.

(b) If Seller disagrees with Purchaser’s Allocation, Seller shall, within thirty (30) days after delivery of the Allocation, deliver a written notice to Purchaser to such effect, specifying those items as to which Seller disagrees and setting forth Seller’s proposed Allocation, in which case Purchaser and Seller shall, during the twenty (20) days immediately following such delivery, use commercially reasonable efforts to reach agreement on the disputed items or amounts in order to determine the appropriate Allocation. If Seller does not so deliver a written notice to Purchaser specifying those items to which Seller disagrees and Seller’s proposed Allocation, then Seller shall be deemed to consent to Purchaser’s proposed Allocation.

(c) If Purchaser and Seller are not able to agree on the Allocation within such 20-day period, Purchaser and Seller shall submit to the Accounting Firm for resolution, in accordance with the procedural principles of Section 2.02(c) and this Section 2.04, all remaining disagreements with respect to the proposed Allocation. The Allocation shall be revised to reflect the fair market value determinations of the Accounting Firm, if any, together with items and amounts as to which Purchaser and Seller had previously agreed (or were deemed to agree), and the Allocation shall be final and binding on Purchaser, Seller and their respective Affiliates. If any adjustment is subsequently made to the purchase price hereunder, Seller and Purchaser will cooperate with each other in good faith to promptly amend the Allocation to reflect such adjustment.

(d) Purchaser and Seller and their respective Affiliates shall report, act, and file Tax Returns in all respects and for all purposes consistent with the Allocation as finally determined pursuant to this Section 2.04, and neither Purchaser nor Seller nor their respective Affiliates shall take any position on any Tax Return, before any Governmental Entity or in any judicial proceeding that is inconsistent with the Allocation as finally determined pursuant to this Section 2.04, except to the extent required pursuant to a “determination,” within the meaning of Section 1313(a) of the Code.

ARTICLE III

Representations and Warranties of Seller and the Company

For the avoidance of doubt, for all purposes of this Article III (other than Section 3.04 and Section 3.16) the Asset Transfer and the other transactions contemplated by the Asset Transfer Agreement shall be deemed to have been consummated prior to the date of this Agreement. Except as set forth in the Seller Disclosure Schedule (with specific reference to the Section of this Agreement to which any such item relates; *provided*, that such item set forth in any section of the Seller Disclosure Schedule shall be deemed to apply to each other section of the Seller Disclosure Schedule and each other Section of this Agreement to the extent its relevance is reasonably apparent from the face of such disclosure), each of Seller and the Company hereby represents and warrants to Purchaser as of the date hereof and as of the Closing follows:

SECTION 3.01. Organization, Standing and Authority; Execution and Delivery; Enforceability.

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the requisite power and authority to own, lease, use or otherwise hold assets owned, leased, used or otherwise held by it to carry on the Business as presently conducted. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the requisite power and authority to own, lease, use or otherwise hold assets owned, leased, used or otherwise held by it to carry on the Business as presently conducted. Each of Seller and the Company is in good standing under the laws of its jurisdiction of formation and is in good standing and duly qualified to do business in each jurisdiction in which the conduct or nature of the Business or the ownership, leasing or holding of properties used in the Business makes such qualification necessary, except such jurisdictions where the failure to be in good standing or so qualified, individually or in the aggregate, would not be reasonably likely to have a Company Material Adverse Effect.

(b) Each of Seller and the Company has all requisite corporate or other organizational power and authority to enter into this Agreement and the Other Transaction Documents to which it is a party or will be a party and to consummate the transactions contemplated hereby and thereby and comply with the terms and conditions hereof and thereof. All acts and other proceedings required to be taken by Seller and the Company to authorize the execution, delivery and performance of this Agreement and the Other Transaction Documents to which it is a party or will be a party and to consummate the transactions contemplated hereby and thereby and comply with the terms and conditions hereof and thereof have been duly and properly taken.

(c) This Agreement has been duly executed and delivered by Seller and the Company and, prior to Closing, Seller and the Company will have duly executed and delivered each Other Transaction Document to which Seller or the Company is a party or will be a party. Assuming that this Agreement has been duly authorized, executed and delivered by Purchaser, this Agreement constitutes, and, upon the due authorization, execution and delivery by Purchaser of each Other Transaction Document to which it is specified to be a party, such Other Transaction Documents will constitute, a legal, valid and binding obligation of Seller and the Company, as applicable, enforceable against Seller or the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally, general principles of equity and the discretion of courts in granting equitable remedies.

SECTION 3.02. No Conflicts; Consents.

(a) The execution and delivery of this Agreement, and each of the Other Transaction Documents to which Seller or the Company is a party or will be a party by Seller or the Company does not and will not, and the consummation of the transactions contemplated hereby and thereby and compliance by Seller and the Company with the terms and conditions hereof and thereof will not (i) conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, require any notice with respect to, or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a benefit under, any provision of (A) the Governing Documents of Seller or the Company, or (B) any Contract to which Seller or the Company is a party or by which any of them or their respective properties or assets may be subject, (ii) violate any Injunction or, subject to the matters referred to in paragraph (b) below, applicable Law, (iii) result in the creation of any mortgages, liens, licenses, security interests, charges, options, hypothecations, pledges, covenants, conditions, restrictions, encroachments, adverse claims, imperfections of title or encumbrances of any kind, whether voluntarily incurred or arising by operation of law, including any agreements to give or not to give or right to obtain any of the foregoing in the future, and any conditional installment, or contingent sale or other title retention agreements or leases in the nature thereof (“Liens”) (other than Permitted Liens or Liens arising from acts of Purchaser or its Affiliates) upon any properties or assets of the Company or the Business or (iv) constitute a sale of all or substantially all of the assets of Seller requiring the vote and approval of Seller’s stockholders (or equivalent) or debtholders, other than, solely in the case of clauses (i)(B) and (iii) above, any such items that, individually or in the aggregate would not be reasonably likely to have a Company Material Adverse Effect.

(b) No consent, waiver, approval, license, permit, order or authorization (each, a “Consent”) of, or filing, application, notification, registration or other declaration (each, a “Filing”) made to or with, any Governmental Entity is required to be obtained or made by or with respect to Seller or the Company in connection with the execution and delivery of this Agreement or the Other Transaction Documents to which Seller or the Company is a party or will be a party, the consummation of the transactions contemplated hereby or thereby or the compliance by Seller or the Company with the terms and conditions hereof and thereof, other than (i) compliance with any Consents and Filings under the HSR Act or any other Antitrust Law, (ii) those that may be required solely by reason of Purchaser’s or any of its Affiliates’ (as opposed to any other third party’s) participation in the transactions contemplated hereby or by the Other Transaction Documents, (iii) those that would not reasonably be expected to (A) materially impair or delay the ability of Seller or the Company to perform their respective obligations under this Agreement or the Other Transaction Documents contemplated hereby and thereby on a timely basis or result in a violation or breach of, or constitute (with or without the lapse of time or both) a default under, or give rise to any right of termination, cancellation, amendment or acceleration of any obligation of Seller or the Company (with respect to the Business), under any terms, conditions or provisions of any Material Contract or Permit or (B) result in material Liability to the Company or otherwise materially interfere with the conduct of the Business, and (iv) compliance with any Filings required by the rules and regulations of any applicable securities exchange or listing authority.

SECTION 3.03. Capitalization; Subsidiaries.

(a) Seller has good, marketable and valid title to the Units, free and clear of any Liens, and is the sole record and beneficial owner thereof. Assuming Purchaser has the requisite power and authority to be the lawful owner of the Units, upon delivery to Purchaser at the Closing of a certificate of transfer with respect to the Units, duly endorsed by Seller, and upon Seller's receipt of the Closing Date Purchase Price, good, marketable and valid title to the Units will pass to Purchaser, free and clear of any Liens.

(b) Except for the Units, there are no shares of capital stock or other voting securities of, or equity interests in, the Company, issued, reserved for issuance or outstanding. The Units have been duly authorized and validly issued and are fully paid and non-assessable. The Units have not been issued in violation of, and are not subject to, any preemptive, subscription, purchase options, rights of first refusal or similar rights under any provision of applicable Law, the Governing Documents of the Company or any Contract to which the Company is subject, bound or a party or otherwise. There are no outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (or that are convertible into, or exercisable or exchangeable for, interests or securities having the right to vote) on any matters on which holders of the Units, respectively, may vote (" Voting Debt "). There are no outstanding warrants, options, rights, "phantom" stock rights, stock appreciation rights, stock-based performance units, convertible or exchangeable securities or other commitments or undertakings (other than this Agreement) (i) pursuant to which Seller or the Company is or may become obligated to issue, deliver or sell (A) any additional shares of capital stock or other voting securities of, or equity interests in, the Company, (B) any security convertible into, or exercisable or exchangeable for, shares of capital stock or other voting securities of, or equity interests in, the Company or (C) any Voting Debt, (ii) pursuant to which Seller or the Company is or may become obligated to issue, grant, extend or enter into any such warrant, option, right, unit, security, commitment or undertaking or (iii) that give any person the right to receive any benefits or rights similar to any rights enjoyed by or accruing to Seller as the sole holder of the Units. There are no Contracts to which the Company is a party that require the Company to register, repurchase, redeem or otherwise acquire any capital stock or other equity interest or to make any investment (in the form of a loan, capital contribution or otherwise) in any person.

(c) Other than this Agreement and the Governing Documents of the Company, the Units are not subject to any voting trust agreement or other Contract, including any such Contract (i) restricting or otherwise relating to the voting, dividend rights or disposition of the Units or (ii) containing any information rights, registration rights, financial statement requirements or other similar rights that would survive the Closing unless terminated or amended prior to the Closing.

(d) The Company does not have any subsidiaries and does not own, directly or indirectly, any equity interests in any other person or any interest convertible into an equity interest in any other person. The Company has not (i) agreed, nor is it obligated, to make any future investment in or capital contribution to any person or (ii) guaranteed and is not responsible or liable for any obligation of any person.

SECTION 3.04. Financial Statements.

(a) Section 3.04(a) of the Seller Disclosure Schedule sets forth true and complete copies of the following financial statements (together with the notes thereto): (i)(A) the unaudited balance sheets of the Company as of December 31, 2015 and 2016 and (B) the related statements of income as of and for the period February 9, 2015 through December 31, 2015 and for the twelve (12) month period ended December 31, 2016 (the “Unaudited Financial Statements”); and (ii) the unaudited balance sheet of the Company as of June 30, 2017 (the “Interim Balance Sheet Date”) and the related statement of income as of the six (6) month period ended June 30, 2017 (the “Interim Financial Statements” and, together with the Unaudited Financial Statements, the “Financial Statements”).

(b) The Financial Statements (i) have been prepared from, are in accordance with, and accurately reflect the books and records of the Company in all material respects (except as may be indicated in the notes thereto), (ii) have been prepared in accordance with GAAP applied on a consistent basis throughout the period covered (except, in the case of the Interim Financial Statements, for normal and recurring year-end adjustments that are not expected to be material, on an individual basis or in the aggregate, to the Company or the Business) and (iii) fairly present, in all material respects, the financial position of the Company as of the date thereof.

(c) Seller has, with respect to the Company, established and maintained systems of internal accounting controls sufficient to provide reasonable assurances that (i) all transactions are executed in accordance with management’s general or specific authorization, (ii) all transactions are recorded as necessary to permit the preparation of financial statements in accordance with GAAP and to maintain proper accountability for such items, (iii) access to the Company’s property and assets is permitted only in accordance with management’s general or specific authorization and (iv) recorded accountability for items is compared with actual levels at reasonable intervals and appropriate action is taken with respect to any differences.

(d) Neither the Company nor the Business has, nor is subject to any, Liability, whether absolute, contingent, accrued or otherwise, of a nature that would be required to be disclosed or reflected on or reserved against in a balance sheet of the Company prepared in accordance with GAAP (or in the notes thereto), other than Liabilities (i) reflected on, or reserved against in, the balance sheet dated as of June 30, 2017 (or in the notes thereto) that is included in the Financial Statements, (ii) incurred since December 31, 2016 in the ordinary course of business (none of which are a liability for breach of contract, tort, infringement, or misappropriation), (iii) in respect of the Asset Transfer, (iv) Selling Expenses and (v) the Liabilities set forth in Section 3.04(d) of the Seller Disclosure Schedule. Following the consummation of the Asset Transfer, the Company shall not have, nor will be subject to any, Non-Business Liability.

SECTION 3.05. Taxes.

(a) The Company has duly and timely filed all income and other material Tax Returns required to be filed by the Company and all such Tax Returns are true and complete in all material respects. Except as set forth in Section 3.05(a) of the Seller Disclosure Schedule, no claim has ever been made to the Company or Seller in writing by a Taxing Authority in a jurisdiction in which Seller or the Company does not file a Tax Return that the Company or Seller as a result of its ownership interest in the Company is or may be subject to taxation by that jurisdiction. All material Taxes required to have been withheld and paid in connection with amounts paid by the Company to any employee, former employee, independent contractor or other party have been withheld and paid to the appropriate Governmental Entity.

(b) All Taxes due and owing by or with respect to the Company (whether or not shown as due on any Tax Returns) have been timely paid. The unpaid Taxes of the Company (being Taxes not yet due and owing) will not exceed the reserve for Tax Liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the balance sheets contained in the Interim Financial Statements (rather than in any notes thereto), as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Company in filing its Tax Returns.

(c) There are no Liens for Taxes on any assets of the Company, except for Liens for Taxes that are not yet due and owing.

(d) No waivers of any statute of limitations in respect of Taxes or extensions of time with respect to an assessment or deficiency for Taxes are still in effect or have been requested, in each case, by or with respect to the Company.

(e) Except as set forth in Section 3.05(e) of the Seller Disclosure Schedule, there are no pending or, to Seller's knowledge, threatened audits, assessment, or proposed deficiencies for a material amount of unpaid Taxes asserted against (i) the Company or (ii) to the extent related to the Company or the Business, against Seller, in each case for which the Company or Seller has received written notice thereof.

(f) The Company has not constituted either a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code in the two years prior to the date of this Agreement.

(g) The Company has never been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which is Seller) or any similar group for federal, state, local or foreign Tax purposes. The Company has no Liability for the Taxes of any person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign Law), as a transferee or successor, by Contract, or otherwise, other than an agreement entered into in the ordinary course of business the principal purpose of which does not relate to Taxes.

(h) The Company is, and has at all times since February 9, 2015 been, treated as a disregarded entity for U.S. federal income tax purposes.

(i) The Company will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in, or improper use of, any accounting method for a period prior to the Closing; (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or foreign Law) executed prior to the Closing; (iii) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or foreign Law) with respect to the period prior to the Closing; (iv) installment sale or open transaction disposition made prior to the Closing; (v) prepaid amount received prior to the Closing; or (vi) election under Section 108(i) of the Code made prior to the Closing.

(j) The Company has not entered into any “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b).

(k) The Company is not a party to or is the Company or the Business bound by any Tax allocation agreement, Tax sharing agreement or similar agreement, other than any such agreement entered into in the ordinary course of business the principal purpose of which does not relate to Taxes.

SECTION 3.06. Real Property.

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

(b) Section 3.06(b) of the Seller Disclosure Schedule sets forth a true and complete list, as of the date of this Agreement, of all real property which the Company leases or Seller leases with respect to the Business, subleases, licenses or otherwise occupies, except for such real property for which the interest of the Company therein will be terminated prior to the Closing (such real property, the “Leased Property”). Except as set forth in Section 3.06(b) of the Seller Disclosure Schedule with respect to each of the Leases: (i) such Lease is legal, valid, binding, enforceable and in full force and effect; (ii) the Company’s possession and quiet enjoyment of the Leased Property under such Lease has not been disturbed, and to the knowledge of Seller, there are no disputes with respect to such Lease; (iii) neither the Company nor, to the knowledge of Seller, any other party to the Lease is in breach or default under such Lease, and, to the knowledge of Seller, no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such Lease; (iv) no security deposit or portion thereof deposited with respect such Lease has been applied in respect of a breach or default under such Lease which has not been redeposited in full; (v) the Company does not owe, or will not owe in the future, any brokerage commissions or finder’s fees with respect to such Lease; (vi) the Company has not subleased, licensed or otherwise granted any person the right to use or occupy such Leased Property or any portion thereof; and (vii) the Company has not collaterally assigned or granted any other security interest in such Lease or any interest therein.

(c) Seller has made available to Purchaser, to the extent in Seller's possession, or reasonably available to Seller, for review true and complete copies of each written lease, sublease, license or other occupancy agreement in respect of a Leased Property (each, a "Lease"). With respect to any Leased Property, except for the leases, subleases or similar agreements set forth in Section 3.08(a)(vi) of the Seller Disclosure Schedule, neither Seller nor the Company has granted any right to use or occupy all or any portion of such property.

(d) There are no pending nor, to the knowledge of the Seller, threatened, condemnation, eminent domain or similar proceedings with respect to any Leased Property.

(e) All improvements located on the Leased Property are in good condition and repair, reasonable wear and tear excepted. To the extent that any Lease requires the Company or Seller to maintain any such improvements, the Company or Seller, as applicable, is in compliance in all material respects with such obligation.

SECTION 3.07. Intellectual Property.

(a) Subject to Section 6.02, the Company exclusively owns all right, title, and interest in and to all Company Owned Intellectual Property, and has a right to use all other Intellectual Property that is used by the Company in the conduct of the Business as presently conducted (the "Company Intellectual Property"), in each case free and clear of all Liens other than Permitted Liens.

(b) The execution and delivery of this Agreement and the Other Transaction Documents by Seller and the Company, and the consummation of the transactions contemplated hereby and thereby, will not result in (i) the loss, termination, or impairment of any rights of the Company in any Company Intellectual Property licensed pursuant to a Company IP Agreement or otherwise, or (ii) the license, assignment, transfer, or grant of any right, title or interest in any Company Owned Intellectual Property (whether by contract, operation of law, or otherwise) to any other person. Section 3.07(b) of the Seller Disclosure Schedule sets forth sets forth a true and complete list, as of the date of this Agreement, of all Company Owned Intellectual Property that is a Patent, Mark, copyright or Internet domain name that, as applicable, has been issued or registered, or with respect to which an application for a Patent or registration has been filed (" Registered Intellectual Property ").

(c) No claims or Proceedings are pending or, to the knowledge of Seller, have been threatened in writing since February 9, 2015, against Seller or its Affiliates (with respect to the Business) by any person challenging the ownership, validity, registration, use or enforceability of any Company Owned Intellectual Property that is Registered Intellectual Property.

(d) Except as set forth in Section 3.07(d) of the Seller Disclosure Schedule, all persons (including current and former employees, contractors and consultants of the Company) who have participated in the creation, conception, authorship, or development of any of the material Intellectual Property for, or under the direction or supervision of, the Company have executed and delivered to Seller or the Company, as applicable, a valid Contract (i) providing for the non-disclosure by such person of any trade secrets or other confidential information of the Company, and (ii) providing for the assignment (by way of a present grant of assignment) by such person to Seller or the Company, as applicable, of any Intellectual Property arising out of such person's employment by, engagement by, or contract with Seller or the Company, as applicable.

(e) Section 3.07(e) of the Seller Disclosure Schedule sets forth a true and complete list of all Company IP Agreements, other than (i) Off-the-Shelf Software Licenses, (ii) non-disclosure agreements entered into in the ordinary course of business, (iii) agreements with current and former employees and contractors for the assignment of Intellectual Property to the Company in the ordinary course of business, (iv) non-exclusive licenses of Intellectual Property granted in the ordinary course of business; and (v) licenses to Open Source Software.

(f) No Software developed by or on behalf of the Company is subject to any license to Open Source Software that requires or conditions the use or distribution of such Software on, the disclosure, licensing, or distribution of any source code for any portion of such Software, and Seller and the Company are and have been in compliance with all applicable licenses to Open Source Software.

(g) The conduct of the Business as presently conducted is not infringing, misappropriating, diluting, or otherwise violating, and the conduct of the Business during the past six (6) years has not infringed, misappropriated, diluted, or otherwise violated, the Intellectual Property rights of any other person. To the knowledge of Seller, no third party is infringing, misappropriating, diluting or otherwise violating Company Owned Intellectual Property.

(h) The material IT Assets (i) operate in all material respects in accordance with their documentation and functional specifications, (ii) have not, from February 9, 2015 through the date hereof, malfunctioned or failed in any material respect, and (iii) are reasonably sufficient to conduct the Business as presently conducted, including as to capacity, scalability and ability to process current peak volumes in a timely manner. The Company and Seller (with respect to the Business) has implemented commercially reasonable measures, to protect the confidentiality and security of the IT Assets (and all information stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption. The Company and Seller (with respect to the Business) has implemented commercially reasonable data backup, data storage, system redundancy and disaster avoidance and recovery procedures as well as a commercially reasonable business continuity plan.

(i) There has been no (to Seller's knowledge in the case of Company Intellectual Property that is licensed to the Company or IT assets that are leased to the Company) actual or alleged unauthorized use, access, intrusion, theft, or breach of security, of any of the (i) Company Intellectual Property or IT Assets or (ii) any personal information, payment card information, confidential or proprietary data, or any other information collected, maintained, or stored by or on behalf of the Company (or any loss, destruction, compromise, or unauthorized disclosure thereof).

(j) The Company and the Seller (with respect to the Business) (including its use or handling of Personal Data) are and have at all times been in material compliance with Data Security Requirements. Over the past twenty-four (24) months, neither Seller nor the Company has received any written notice or allegation that the Company or the operation of the Business is or may be in violation of any Data Security Requirements.

SECTION 3.08. Contracts.

(a) Section 3.08(a) of the Seller Disclosure Schedule sets forth each written or oral contract, lease or sublease, indenture, license, agreement, arrangement, commitment or other legally binding arrangement (each, a “Contract”) to which the Company is a party or by which its assets or properties are subject or bound or to which Seller or any of its Affiliates (other than the Company) is a party to and is material to, or necessary to operate, the Business, in each case, as of the date of this Agreement, that is:

(i) a Contract for the employment or engagement of any individual on a full-time, or part-time basis, including directors, employees (temporary and seasonal) and independent contractors;

(ii) a Contract that is with any employee leasing agency, staffing firm, professional organization, or other provider of contingent workers for the Company or Seller with respect to the Business;

(iii) (A) restrictive of the ability of the Company (including Purchaser or its Affiliates (including for the avoidance of doubt, the Company) following the Closing) to compete in any business or with any person in any geographic area or solicit any restaurant, corporate client or other customer of any other person, (B) solicit, hire or retain any person as an employee, consultant or individual independent contractor for the Company or Seller for the Business, or (C) a Contract that contains a grant of exclusivity by the Company (including Purchaser or its Affiliates following the Closing) to any other person;

(iv) a Contract with (A) Seller or any of its Affiliates (other than the Company) that has an aggregate future Liability to any person in excess of \$100,000, or (B) any officer, director, employee or shareholder of Seller or the Company pertaining to the Business (other than employment Contracts and Benefit Plans); *provided, however*, that the foregoing shall be deemed not to include any Other Transaction Document or any Contract that will expire or be terminated without Liability to the Company at or prior to Closing;

(v) a collective bargaining agreement or other Contract with any labor organization, union or works council (each, a “Union Contract”);

(vi) any Lease;

(vii) a lease, sublease or similar Contract with any person under which (A) the Company is lessee of, or holds or uses, any equipment, vehicle or other tangible personal property owned by any person or (B) the Company is a lessor or sublessor of, or makes available for use by any person, any tangible personal property owned or leased by the Company, in any such case, which has an aggregate future Liability or receivable, as the case may be, in excess of \$100,000 in a calendar year and is not terminable without Liability to the Company by notice of not more than thirty (30) days;

(viii) (A) a continuing Contract for the future purchase of materials, supplies or equipment or (B) a management, service, consulting or other similar Contract (other than contracts for services entered into in the ordinary course of business), in any such case, which has an aggregate future Liability to any person in excess of \$100,000 for any calendar year and is not terminable without Liability to the Company by notice of not more than thirty (30) days;

(ix) a Contract (A) evidencing Indebtedness (including any note, bond, debenture or other evidence of Indebtedness) of the Company to any other person or (B) under which (1) the Company has directly or indirectly guaranteed Indebtedness or other Liabilities of another person or (2) any person has directly or indirectly guaranteed Indebtedness or other Liabilities of the Company, in the case of each of clauses (A) and (B), which, individually, is in excess of \$100,000;

(x) a Contract under which the Company, directly or indirectly, has made or is required to make any advance, loan, extension of credit or capital contribution to, or other investment in, any person, in any such case, which, individually, is in excess of \$100,000;

(xi) a Contract that is a settlement, conciliation or similar agreement with any Governmental Entity or pursuant to which Seller (with respect to the Business) or the Company will have any material outstanding obligations after the date of this Agreement;

(xii) a mortgage, pledge, security agreement, deed of trust or other Contract granting a Lien (other than a Permitted Lien) upon any Leased Property;

(xiii) a Contract with any Governmental Entity;

(xiv) a Contract with any Key Customer or Key Vendor;

(xv) a Contract (other than the Asset Transfer Agreement) (A) that was entered into since February 9, 2015, that relates to the acquisition or disposition of any assets, properties or businesses of the Company or that are materially related to the Business or (B) that relates to the acquisition or disposition of any assets, properties or businesses, under which there is any Liability of the Company or the Business;

(xvi) a Contract for the sale of any asset of the Company or Seller (with respect to the Business) or the grant of any preferential rights to purchase any such asset, in each case, outside the ordinary course of business;

(xvii) a Contract for any joint venture, partnership or similar arrangement;

(xviii) a Contract that contemplates or involves: (A) the payment or delivery of cash or other consideration by the Company in an amount or having a value in excess of \$100,000 individually or (B) the performance of services in exchange for consideration with a value in excess of \$100,000 individually;

(xix) a Contract relating to the advertising or promotion of the Business or pursuant to which any third parties advertise on any websites operated by the Company or Seller (with respect to the Business);

(xx) a Contract containing a “most favored nation” pricing agreement or similar arrangement for pricing, discounts or benefits that change based on the pricing, discounts or benefits offered to other persons by the Company or Seller with respect to the Business (including Purchaser or its Affiliates following the Closing);

(xxi) a Contract requiring capital expenditure (including any series of related expenditures) of more than \$100,000 (in either case, other than employment Contracts and Benefit Plans);

(xxii) a Contract that is an indemnity agreement; or

(xxiii) a Contract providing a power of attorney to any person; or

(xxiv) other than any Contract specified in clauses (i) through (xxiii) above, any Contract involving payments by or to the Company of \$100,000 or more in any calendar year.

(b) Each Contract set forth in Section 3.08(a) of the Seller Disclosure Schedule (each, a “Material Contract”) is valid, binding and in full force and effect and enforceable by the Company (or Seller or its Affiliates as applicable) in accordance with its terms (subject, as to enforcement, to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors’ rights generally, general principles of equity and the discretion of courts in granting equitable remedies), except (i) to the extent that the failure of any such Contracts to be valid, binding and in full force and effect, individually or in the aggregate, would not be reasonably likely to result in material Liability to the Company or otherwise materially interfere with the conduct of the Business and (ii) for the expiration of such Material Contract in accordance with its express terms after the date hereof. No notice, whether written or oral, has been received by the Company alleging that it is in breach or default under any Material Contract except to the extent that any such breach or default, individually or in the aggregate, would not be reasonably likely to result in material Liability to the Company or otherwise materially interfere with the conduct of the Business. No event has occurred, is pending, or, to the knowledge of Seller, is threatened, which (with or without notice or lapse of time, or both) would constitute a breach or default by the Company under any Material Contract or, to the knowledge of Seller, any other party to a Material Contract, except to the extent that such breach or default, individually or in the aggregate, would not be reasonably likely to result in material Liability to the Company or otherwise materially interfere with the conduct of the Business. A complete and accurate copy of each Material Contract, including all amendments and modifications thereto, has been made available to Purchaser.

SECTION 3.09. Permits. The Company validly holds and has complied with all the terms and conditions of each material Permit held by the Company or is held by any Seller Company (other than the Company) on behalf of the Company or the Business (each such Permit, a “Company Permit”), in each case, except for any such invalidity or non-compliance that, individually or in the aggregate, would not be reasonably likely to result in material Liability to the Company or otherwise materially interfere with the conduct of the Business. The Company possesses all Permits necessary for the operation of the Business, except as would not reasonably be expected, individually or in the aggregate, to result in material Liability to the Company or otherwise materially interfere with the conduct of the Business. Since February 9, 2015, no Seller Company has received written notice of any Proceeding relating to the revocation or modification of any Company Permit, the loss or modification of which, individually or in the aggregate, would be reasonably likely to result in material Liability to the Company or otherwise materially interfere with the conduct of the Business. No event has occurred that allows, or after notice or lapse of time would allow, revocation or termination of a Company Permit or results in any other material impairment of the rights of the holder of any such Company Permit, other than an expiration of such Company Permit in accordance with its terms.

SECTION 3.10. Proceedings. Since February 9, 2015, there have been no material lawsuits, claims, suits, actions, charges, complaints, audits, arbitrations, investigations, inquiries or other proceedings (“Proceedings”) pending or, to the knowledge of Seller, threatened against Seller (with respect to the Business) or the Company or any of their respective directors or officers (in their capacity as such) or otherwise arising out of or relating to the Business. Neither the Company nor Seller (with respect to the Business) is a party or subject to or in default under any material Injunction of any Governmental Entity or arbitration tribunal applicable to the Company or the Business.

SECTION 3.11. Benefit Plans.

(a) Section 3.11(a) of the Seller Disclosure Schedule sets forth a list of each material Benefit Plan that covers any Business Employee who provides services primarily to the Business. With respect to each Benefit Plan, Seller has made available to Purchaser complete and correct copies of the current plan document (or a written description of material terms if no plan document exists) and, if required by applicable Law, the Benefit Plan’s summary plan description. Each Benefit Plan and, if applicable, related trust has been established, maintained, funded and administered in all material respects and complies in all material respects, with respect to any Business Employee, with its terms and all applicable Laws (including ERISA and, the Code). Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a “Qualified Benefit Plan”) has received a favorable determination letter from the Internal Revenue Service, or with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype or volume submitter plan sponsor, in each case a copy of which has been made available to Purchaser, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to cause the revocation of such determination letter from the Internal Revenue Service or the unavailability of reliance on such opinion letter from the Internal Revenue Service, as applicable or otherwise adversely affect the qualification of such Benefit Plan. With respect to any Benefit Plan and any Business Employee, to the knowledge of Seller, no event has occurred or is reasonably expected to occur that has resulted in or would subject Seller to a Tax under Section 4971 of the Code. No event has occurred that would subject the Transferred Assets to a lien under Section 430(k) of the Code. All contributions, distributions, reimbursements and premium payments due with respect to any Business Employee under or pursuant to each Benefit Plan prior to the Closing will have been timely made as of the Closing.

(b) No Benefit Plan is, and neither Seller nor any of its Affiliates has any current or contingent liability or obligation under or with respect to: (i) a plan that is or subject to the minimum funding standards of Section 302 of ERISA or Section 412 of the Code; or (ii) a “multi-employer plan” (as defined in Section 3(37) of ERISA). Neither Seller nor any of its Affiliates has: (A) withdrawn from any pension plan under circumstances resulting (or expected to result) in liability; or (B) engaged in any transaction which would give rise to a liability under Section 4069 or Section 4212(c) of ERISA.

(c) Except as set forth on Section 3.11(c) of the Seller Disclosure Schedule attached hereto and other than as required under Section 4980B of the Code or other similar applicable Law and for which the beneficiary pays the full premium cost, no Benefit Plan provides for any Business Employee benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment or service (other than death benefits when termination occurs upon death).

(d) Except as set forth on Section 3.11(d) attached hereto, no Benefit Plan exists that could: (i) result in the payment to any Business Employee, director or consultant of the Business of any money or other property; or (ii) accelerate the payment, vesting of or provide any additional rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any Business Employee, director or consultant of the Business, in each case, as a result of the execution of this Agreement or the consummation of the transactions contemplated hereby.

(e) The execution of this Agreement and the consummation of the transactions contemplated hereby, will not (alone or in conjunction with any other event) (i) result in any material payment becoming due to any Business Employee or Former Business Employee under any Benefit Plan or otherwise, (ii) materially increase any benefits or compensation otherwise payable to any Business Employee or Former Business Employee under any Benefit Plan or otherwise, or (iii) result in the acceleration of time of payment or vesting of, or require the material funding of, any such benefits or compensation.

(f) Each Benefit Plan that is a “nonqualified deferred compensation plan” (within the meaning of Section 409A of the Code) complies with respect to the Business Employees in all material respects with the requirements of Section 409A of the Code and the regulations thereunder by its terms and has been operated with respect to the Business Employees in all material respects in accordance with such requirements such that no material additional Taxes are due with respect to any such arrangement under Section 409A of the Code.

(g) The Company is not a party to, nor is otherwise obligated under, any plan, policy, agreement or arrangement that provides for the gross-up or reimbursement of Taxes imposed under Section 409A or 4999 of the Code (or any corresponding provisions of state, local or foreign Taxes). No amount or other entitlement that could be received as a result of the transactions contemplated hereby (alone or in conjunction with any other event, including any termination of employment) by any “disqualified individual” (as defined in Section 280G(c) of the Code) with respect to the Company will constitute an “excess parachute payment” (as defined in Section 280G(b)(1) of the Code).

SECTION 3.12. Absence of Changes or Events.

(a) Since the Interim Balance Sheet Date, there has not been any change, effect, event or occurrence that has resulted or would reasonably be expected to result, individually or in the aggregate, in a Company Material Adverse Effect.

(b) Except in connection with or pursuant to the Asset Transfer, from the Interim Balance Sheet Date through the date of this Agreement, (i) the Business has been conducted in the ordinary course of business in all material respects and (ii) neither the Company nor Seller has taken any action that would have required the consent of Purchaser under Section 5.02 had such action occurred after the date hereof.

SECTION 3.13. Compliance with Applicable Laws.

(a) Each of the Company and Seller (with respect to the Business) is, and since February 9, 2015 has been, in material compliance with all applicable Laws and Injunctions. Since February 9, 2015, neither the Company nor Seller (with respect to the Business), has received any written or, to the knowledge of Seller, oral communication from a Governmental Entity that alleges that any the Company or Seller (with respect to the Business), is in violation of any applicable Laws or Injunctions, except for any such violations that, individually or in the aggregate, would not reasonably be expected to result in material Liability to the Company or otherwise materially interfere with the conduct of the Business.

(b) Neither the Company nor, to the knowledge of Seller, any of the Business Employees (in each case, acting in their capacities as such) has, directly or indirectly, through its representatives or any person authorized to act on its behalf (i) violated in any material respect (A) the Foreign Corrupt Practices Act, (B) the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Officials in International Business Transactions and legislation implementing such convention or (C) all other international anti-bribery conventions and bribery Laws applicable to the Company (collectively, the “Anti-Bribery Laws.”) or (ii) offered, paid, promised to pay, or authorized the payment of any money, or offered, gifted, promised to give, or authorized the giving of anything of value, to any Government Official or to any other person: (A) for the purpose of (1) corruptly or improperly influencing any act or decision of any Government Official in his official capacity; (2) inducing any Government Official to do or omit to do any act in violation of their lawful duties; (3) securing any improper advantage; or (4) inducing any Government Official to use his respective influence with a Governmental Entity to affect any act or decision of such Governmental Entity in order to, in the case of each of clause (1), (2), (3) or (4), assist the Company in obtaining or retaining business for or with, or directing business to, the Company; or (B) in a manner which would constitute or have the purpose or effect of public or commercial bribery, acceptance of, or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business or any improper advantage. Since February 9, 2015, neither the Company nor Seller (with respect to the Business) has received any written or, to the knowledge of Seller, oral communication from a Governmental Entity that alleges that any manager, officer, employee or authorized agent of the Company or the Business or any other person acting on behalf of the Company or the Business is in violation of any Anti-Bribery Law.

SECTION 3.14. Environmental Matters. Except as could not result, individually or in the aggregate, in material Liability to the Company or otherwise materially interfere with the conduct of the Business (i) each of the Company and Seller (with respect to the Business) is, and has since February 9, 2015, been, in compliance with all Environmental Laws, (ii) the Company possesses and maintains, and has since February 9, 2015, possessed and maintained, all Environmental Permits required for the operation of its properties and the conduct of the Business (the “Company Environmental Permits”), and the Company is, and has since February 9, 2015 been, in compliance with each Company Environmental Permit, (iii) neither Seller nor the Company has received any communication from a Governmental Entity or any other person that alleges that the Company is in violation of, or has any Liability under, any Environmental Law, the substance of which communication has not been fully resolved, (iv) there are no pending or, to the knowledge of Seller, threatened Proceedings against the Company or Seller (with respect to the Business) resulting from any (A) non-compliance with, or Liability under, Environmental Laws or the Company Environmental Permits or (B) a Release of Hazardous Material, and (v) the Company (nor any person whose Liability the Company has assumed, undertaken or become subject to) has not manufactured, transported, treated, managed, handled, stored, Released, used or disposed of, or arranged for the disposal of, owned or operated any property or facility which is or has been contaminated by, or exposed any person to, any Hazardous Material. Seller and the Company have furnished to Purchaser all environmental audits, reports and other material environmental documents relating to the past or current properties, facilities or operations of the Company or the Business which are in Seller’s or the Company’s possession or under their reasonable control.

SECTION 3.15. Employee and Labor Matters . Section 3.15 of the Seller Disclosure Schedule lists all Business Employees as of the date of this Agreement, including (i) date of hire, (ii) work location, (iii) annual salary or hourly wage rate, as applicable, (iv) bonus, commission and other incentive opportunities (including 2016 bonus and/or commissions), (v) treatment as exempt or non-exempt under the federal Fair Labor Standards Act, (vi) job title, and (vii) status as active, on leave, etc. Each of Seller and its Affiliates, including, without limitation, the Company, and, in each case, with respect to the Business Employees and Former Business Employees, is and has been in material compliance with all applicable Laws respecting labor, employment and employment practices, including, provisions thereof respecting terms and conditions of employment, health and safety, wages and hours, immigration, employment discrimination, disability rights or benefits, equal opportunity, affirmative action, plant closures and layoffs (including the WARN Act, workers compensation, labor relations, employee leave issues and unemployment insurance), and, to the Seller's and the Company's knowledge, there is no basis for any material claim alleging a violation with any such Law. With respect to the Business and the Company: (i) there is not and there has not been, any labor strike, work stoppage, walkout, lockout, or labor dispute pending or, to the knowledge of Seller, threatened against Seller or the Company with respect to the Business Employees or Former Business Employees, (ii) to the knowledge of Seller, there is and has been no union organizing activity with respect to, or amongst, the Business Employees or Former Business Employees, (iii) no union or works council or group of Business Employees or Former Business Employees, has made a demand for recognition or filed a petition for an election or certification with the National Labor Relations Board or any other labor relations tribunal or authority relating to Business Employees or Former Business Employees, (iv) there are, and have not been, any pending, or to the knowledge of Seller, threatened material charges against Seller or the Company before the Equal Employment Opportunity Commission or any other Governmental Entity responsible for the prevention of unlawful employment practices, in either case, with respect to any Business Employees or Former Business Employees, (v) neither Seller nor the Company has received notice of the intent of any Governmental Entity responsible for the enforcement of labor or employment Laws to conduct any material investigation, and no such investigation is in progress, in either case, with respect to any Business Employees or Former Business Employees, and (vi) there is no collective bargaining agreement, works council agreement or similar Contract with any labor organization, works council or similar employee representative covering any Business Employee. With respect to the Business and the Company, all Former Business Employees who were terminated from employment since February 9, 2015 have signed a release agreement in favor of the Company. Except as would not result in material Losses for Seller or the Company: (i) the Company and Seller, in either case, with respect to the Business, have paid all material wages, salaries, wage premiums, commissions, bonuses, expense reimbursements, severance, fees, and other compensation that has come due and payable to its current and former Business Employees, Former Business Employees, and any other service providers to the Business, including, contractors, consultants, and other service providers; and (ii) each individual who is providing or since February 9, 2015 has provided services to the Company or to Seller, in either case, for the Business, who is or was classified and treated as an independent contractor, consultant, or other non-employee service provider, is and was properly classified and treated as such for all applicable purposes. Other than those disclosed in Section 3.15 of the Seller Disclosure Schedule, each Business Employee whose primary place of employment is in the United States is an "at will" employee. Other than those disclosed in Section 3.15 of the Seller Disclosure Schedule, there are no written employee handbooks in effect applicable to Seller (with respect to the Business) or the Company. The Business Employees are sufficient in number and skill to allow Purchaser to conduct the Business after the Closing in substantially the same manner as it was conducted by Seller prior to the Closing Date. To the knowledge of Seller, no current Business Employee intends to terminate his or her employment prior to the one (1) year anniversary of the Closing. To the knowledge of Seller, no person is in material violation of any term of any employment agreement, nondisclosure agreement, common law nondisclosure obligation, fiduciary duty, noncompetition agreement, restrictive covenant or other material obligation: (i) to Seller (with respect to the Business) or the Company or (ii) with respect to any person who is a current Business Employee or independent contractor providing services to the Business of Seller or the Company, to any third party with respect to such person's right to be employed or engaged to provide services to the Business by Seller or the Company or to the knowledge or use of trade secrets or proprietary information of the Business. Neither Seller (with respect to the Business) nor the Company has implemented any plant closing or layoff of employees that could implicate the WARN Act, nor are any such actions currently planned, contemplated, or announced. Section 3.15 of the Seller Disclosure Schedule lists all Business Employees who currently have work visas by (i) name, (ii) visa type, (iii) sponsoring entity, and (iv) expiration date, and the transactions contemplated by this Agreement will not affect their ability to continue to work in the Business or for the Company after the Closing Date. Each Business Employee is authorized to work in the jurisdiction in which he or she provides services to the Business.

SECTION 3.16. Sufficiency of Assets.

(a) As of the Closing (and, for the avoidance of doubt, after giving effect to the Asset Transfer), the assets that are owned, leased, used or licensed by the Company will, together with the rights granted under, or the services provided under the Transition Services Agreement, constitute all of the assets, rights, title, interest and properties that are used in the conduct of the Business in the manner in which it is conducted on the date of this Agreement and as of immediately prior to the Closing. Immediately following the Closing, the Company and Purchaser shall be able to use all such assets, rights, title, interest and properties, and take advantage of all such rights, in substantially the same manner as such assets, rights, title, interest and properties are used, or such rights are taken advantage of by the Company or Seller (with respect to the Business), as of the date of this Agreement and as of immediately prior to the Asset Transfer and the Closing.

(b) No Affiliate (other than the Company), executive officer, or director of Seller or any of their respective Affiliates (other than the Company) (i) owns or has any property or right, tangible or intangible, which is material to the operations of or necessary to operate the Business as currently conducted, (ii) has any claim or cause of action against any of the assets of the Company or the Business, or (iii) owes any significant amounts to, or is owed any significant amounts by, the Company or the Business.

(c) The Company owns and has, or as of the Closing (and, for the avoidance of doubt, after giving effect to the Asset Transfer) will have, good and valid title to, or hold pursuant to valid and enforceable leases or licenses, all tangible assets that are used in the Business free and clear of all Liens, except (i) the Liens set forth in Section 3.16(c) of the Seller Disclosure Schedule that are not material to the Business, (ii) mechanics', carriers', workmen's, repairmen's, materialmen's or other like Liens, in each case, arising or incurred in the ordinary course of business relating to amounts not yet due or payable, (iii) Liens to secure payments of workmen's compensation and other similar payments, unemployment and other insurance, old-age pensions or other social security obligations to the extent reflected and adequately reserved against on the Interim Financial Statements, (iv) Liens to secure the performance of bids, tenders, leases, contracts, public or statutory obligations, surety, stay or appeal bonds or other similar obligations arising in the ordinary course of business, (v) Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business, (vi) Liens for Taxes and other governmental charges that are not yet due and payable or are being contested in good faith and for which adequate reserves have been made in accordance with GAAP, (vii) non-exclusive licenses of Intellectual Property granted in the ordinary course of business, and (viii) other imperfections of title or encumbrances, if any, which do not, individually or in the aggregate, materially impair the continued use and operation of the assets of the Company to which they relate in the conduct of the Business as presently conducted (the Liens described in clauses (i) through (viii) above are referred to collectively as "Permitted Liens").

SECTION 3.17. Intercompany Arrangements. Except for (i) the Other Transaction Documents, and (ii) any Contracts that will be terminated on or prior to the Closing Date in accordance with Section 7.06(b), Section 3.17 of the Seller Disclosure Schedule lists all Contracts between or among the Company or any of its officers, directors or employees, on the one hand, and any Seller Company (other than the Company) and their respective officers, directors, employees or stockholders on the other hand.

SECTION 3.18. Key Customers and Vendors.

(a) Section 3.18(a) of the Seller Disclosure Schedule sets forth the top twenty (20) most significant restaurants based on dollar sales volumes of the Business during the twelve (12) month period ended June 30, 2017 (the “Key Customers”).

(b) Section 3.18(b) of the Seller Disclosure Schedule sets forth the top twenty (20) most significant vendors of the Company, based on the amounts invoiced by the Company during the twelve (12) month period ended June 30, 2017 (the “Key Vendors”).

SECTION 3.19. Brokers. No brokers or finders have acted for Seller in connection with this Agreement or the transactions contemplated hereby and no broker or finders are entitled to any brokerage fee, finder’s fee or commission in respect thereof.

SECTION 3.20. Existing Credit Support. Except as set forth on Section 3.20 of the Seller Disclosure Schedule, there are no guarantees, covenants, indemnities, surety bonds, letters of credit, comfort letters or similar assurances of credit support provided by Seller or any of its Affiliates (other than the Company) for the benefit of the Company or the Business.

SECTION 3.21. Bank Accounts.

(a) Section 3.21(a) of the Seller Disclosure Schedule provides the following information with respect to each account maintained by or for the benefit of the Company or the Business at any bank or other financial institution: (i) the name of the bank or other financial institution at which such account is maintained; (ii) the account number; (iii) the type of account; and (iv) the names of all persons who are authorized to sign checks or other documents with respect to such account.

(b) Section 3.21(b) of the Seller Disclosure Schedule lists all of the accounts receivable of the Company, or Seller or its Affiliates (with respect to the Business), as of July 31, 2017. All such accounts receivable, whether billed or unbilled, of the Company or Seller or its Affiliates (with respect to the Business), arose in the ordinary course of business, are carried at values determined in accordance with GAAP consistently applied, to the knowledge of Seller are not subject to any valid set-off or counterclaim, do not represent obligations for goods sold on consignment, on approval or on a sale-or-return basis and are not subject to any other repurchase or return arrangement. No person has any Lien on any accounts receivable of the Company or the Business.

(c) Section 3.21(c) of the Seller Disclosure Schedule contains an accurate and complete list as of the date of this Agreement of all loans and advances made by the Company to any employee, director, consultant or individual independent contractor, other than routine travel advances made to employees in the ordinary course of business.

SECTION 3.22. Insurance. Section 3.22 of the Seller Disclosure Schedule identifies each insurance policy maintained by, at the expense of or for the benefit of the Company or Seller (with respect to the Business) as of the date of this Agreement and identifies all claims made thereunder as of the date of this Agreement. The Company has made available to Purchaser accurate and complete copies of such insurance policies, and each such insurance policy is in full force and effect. Neither the Company nor Seller (with respect to the Business) has received any written notice or other communication regarding any actual or possible: (i) cancellation or invalidation of any insurance policy maintained by, at the expense of or for the benefit of the Company or Seller (with respect to the Business) as of the date of this Agreement, (ii) refusal of any coverage or rejection of any claim under any such insurance policy or (iii) material adjustment in the amount of the premiums payable with respect to any such insurance policy.

SECTION 3.23. No Implied Representations. Notwithstanding anything herein to the contrary, Seller is making no representation or warranty whatsoever, express or implied, beyond those expressly given in this Article III, any Other Transaction Document or in any certificate to be delivered pursuant to this Agreement or any Other Transaction Document. It is understood that any financial estimates, forecasts, projections or other similar information that have been or shall hereafter be made available by or on behalf of Seller, the Company or any other person to Purchaser or any of its Affiliates or its or their respective Representatives, whether written or oral, are not, and shall not be relied upon or deemed to be, representations and warranties of Seller, the Company or any of their respective Affiliates or their respective Representatives, except to the extent expressly provided in this Article III or in any certificate to be delivered hereunder. Nothing in this Agreement shall be interpreted to limit any claim for fraud.

ARTICLE IV

Representations and Warranties of Purchaser and Parent

Each of Purchaser and Parent hereby represents and warrants to Seller and the Company as of the date hereof and as of the Closing as follows:

SECTION 4.01. Organization, Standing and Authority; Execution and Delivery; Enforceability.

(a) Each of Purchaser and Parent is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Each of Purchaser and Parent has all requisite power and authority to enter into this Agreement and the Other Transaction Documents to which it is specified to be a party and to consummate the transactions contemplated hereby and thereby and comply with the terms and conditions hereof and thereof. All acts and other proceedings required to be taken by Purchaser and Parent to authorize the execution, delivery and performance of this Agreement and the Other Transaction Documents to which it is specified to be a party and to consummate the transactions contemplated hereby and thereby and comply with the terms and conditions hereof and thereof have been duly and properly taken.

(b) This Agreement has been duly executed and delivered by Purchaser and Parent and, prior to Closing, Purchaser and Parent will have duly executed and delivered each Other Transaction Document to which it is specified to be a party. Assuming that this Agreement has been duly authorized, executed and delivered by Seller and the Company, this Agreement constitutes, and, upon the due authorization, execution and delivery of the Other Transaction Documents by Seller, the Company or their respective Affiliates of each other Transaction Document to which it is specified to be a party, such Other Transaction Document will constitute, a legal, valid and binding obligation of Purchaser and Parent, enforceable against Purchaser and Parent in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally, general principles of equity and the discretion of courts in granting equitable remedies.

SECTION 4.02. No Conflicts; Consents.

(a) The execution and delivery of this Agreement by Purchaser and Parent do not, the execution and delivery by Purchaser and Parent of each Other Transaction Document to which it is specified to be a party will not, and the consummation of the transactions contemplated hereby and thereby and compliance by Purchaser and Parent with the terms and conditions hereof and thereof will not (i) conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, require any notice with respect to, or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a benefit under, or, any provision of (A) the Governing Documents of Purchaser or Parent, or (B) any Contract to which Purchaser or Parent is a party or by which any of its respective properties or assets may be subject, (ii) violate any Injunction or, subject to the matters referred to in paragraph (b) below, applicable Law, or (iii) result in the creation of any Liens upon any of the properties or assets of Purchaser or Parent under other than, in the case of clauses (i)(B) and (iii) above, any such items that, individually or in the aggregate, would not be reasonably likely to result in a Purchaser Material Adverse Effect.

(b) No Consent of, or Filing with, any Governmental Entity is required to be obtained or made by or with respect to Purchaser or Parent in connection with the execution and delivery of this Agreement or the Other Transaction Documents, the consummation of the transactions contemplated hereby or thereby or the compliance by Purchaser and Parent with the terms and conditions hereof and thereof, other than (i) compliance with and Consents and Filings under the HSR Act or any other Antitrust Law, (ii) those that may be required solely by reason of Seller's or any Affiliate of Seller's (as opposed to any other third party's) participation in the transactions contemplated hereby or by the Other Transaction Documents, (iii) compliance with and Filings or notices required by the rules and regulations of any applicable securities exchange or listing authority and (iv) such other Consents the absence of which, or other Filings the failure to make or obtain which, individually or in the aggregate, would not be reasonably likely to result in a Purchaser Material Adverse Effect.

SECTION 4.03. Proceedings. There are no (i) outstanding Injunctions of any Governmental Entity or arbitration tribunal against Purchaser or Parent or any of their respective Affiliates, or (ii) Proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser, Parent or any of their respective Affiliates, other than, in each case, any such items that, individually or in the aggregate, would not be reasonably likely to result in a Purchaser Material Adverse Effect.

SECTION 4.04. Investment Representations.

(a) Purchase Entirely For Own Account. Purchaser hereby confirms that (i) Purchaser is an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, as amended (the “Securities Act”), and (ii) the Units to be acquired by Purchaser pursuant to this Agreement will be acquired for investment for Purchaser’s own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the Securities Act. Purchaser further represents that Purchaser does not presently have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Units.

(b) Disclosure of Information. Purchaser has had an opportunity to ask questions and receive answers from Seller and the Company regarding the Units.

(c) Restricted Securities. Purchaser understands that the Units have not been, and will not be as of the date of their issuance to Purchaser, registered under the Securities Act, and are being sold to Purchaser by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of Purchaser’s representations expressed in this Section 4.04. Purchaser understands that the Units are “restricted securities” under applicable U.S. federal and state securities laws and that, pursuant to these laws, Purchaser must hold the Units unless and until they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available, and the certificate or certificates representing the Units may contain legends to the foregoing effect. Purchaser understands that no public market exists for any of the securities issued by the Company, including the Units, and that it is unlikely whether a public market will ever exist for the securities issued by the Company, including the Units.

(d) Corporate Securities Law. THE SALE OF THE SECURITIES THAT IS THE SUBJECT OF THIS AGREEMENT HAS NOT BEEN QUALIFIED WITH THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA. THE ISSUANCE OF SUCH SECURITIES OR THE RECEIPT OF ANY PART OF THE ASSETS FOR SUCH SECURITIES PRIOR TO SUCH QUALIFICATION IS UNLAWFUL, UNLESS THE SALE OF SECURITIES IS EXEMPT FROM QUALIFICATION BY SECTION 25100, 25102 OR 25105 OF THE CALIFORNIA CORPORATIONS CODE.

SECTION 4.05. Sufficient Funds. Purchaser will have as of immediately prior to the Closing sufficient funds on hand and available through liquidity facilities existing as of immediately prior the Closing to satisfy its payment obligations to the extent arising under this Agreement or the Other Transaction Documents and any of the other transactions contemplated by this Agreement or the Other Transaction Documents.

SECTION 4.06. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement.

ARTICLE V

Covenants of Seller and the Company

Each of Seller and the Company covenants and agrees as follows:

SECTION 5.01. Access. From the date hereof and continuing until the earlier of the Closing or the termination of this Agreement in accordance with its terms, each of Seller and the Company shall give Purchaser and its Representatives reasonable access, during normal business hours and upon reasonable advance notice, to personnel, properties and Records relating to the Company and the Business, including information beneficial to ensuring a smooth transition to Purchaser's post-Closing ownership of the Company (including the Transferred Assets), operation of the Business and implementation of the transactions contemplated by the Marketing Partnership Agreement; provided, that such access (i) does not unreasonably disrupt the normal operations of Seller or the Company, (ii) would not be reasonably expected to violate any attorney-client privilege of Seller or the Company or violate any applicable Law (including merger control and competition Laws) and (iii) would not reasonably be expected to breach any duty of confidentiality owed to any person whether the duty arises contractually, statutorily or otherwise; provided, further, that each of Seller and the Company shall use its reasonable best efforts to obtain the consent of any person necessary to permit disclosure of any information subject to such confidentiality obligations described in clauses (ii) and (iii) and otherwise make appropriate alternative disclosure arrangements in a manner that would not reasonably be expected to violate such Laws, privilege or obligations.

SECTION 5.02. Ordinary Conduct. From the date hereof and continuing until the earlier of the Closing or the termination of this Agreement in accordance with its terms, except (w) with the prior written consent of Purchaser, (x) as set forth in Section 5.02 of the Seller Disclosure Schedule, (y) pursuant to the Asset Transfer Agreement or (z) otherwise expressly required or permitted by the terms of this Agreement: (A) Seller shall, and shall cause the Company to, cause the Business to be conducted in the ordinary course in substantially the same manner as presently conducted; (B) Seller shall, and shall cause the Company to, use reasonable best efforts to preserve the present commercial relationships with the respective Governmental Entities, restaurants, corporate clients, suppliers, contractors, licensors, employees, distributors and other persons with whom the Company has similar relationships and to preserve the Company's present operations, organization and goodwill; and (C) neither Seller (with respect to the Company or the Business) nor the Company shall:

- (i) amend the certificate of formation, operating agreement or other comparable governing documents of the Company;
- (ii) declare or pay any dividend or make any other distribution to any holder of any Units;

(iii) during the period following the Effective Time until the Closing, repay any Indebtedness or pay any Selling Expense;

(iv) redeem, repurchase or otherwise acquire, directly or indirectly, any units of membership interest or other voting securities of, or equity interests in, the Company or issue, deliver, sell, grant, extend or enter into (A) any shares of capital stock or other voting securities of, or equity interests in, the Company or (B) any warrants, options, rights, “phantom” stock rights, stock appreciation rights, stock-based performance units, convertible or exchangeable securities or other commitments or undertakings (1) pursuant to which the Company is or may become obligated to issue, deliver or sell (i) any additional shares of capital stock or other voting securities of, or equity interests in, the Company, (ii) any security convertible into, or exercisable or exchangeable for, shares of capital stock or other voting securities of, or equity interests in, the Company or (iii) any Voting Debt, (2) pursuant to which the Company is or may become obligated to issue, grant, extend or enter into any such warrant, option, right, unit, security, commitment or undertaking or (3) that give any person the right to receive any benefits or rights similar to any rights enjoyed by or accruing to the holders of the Units;

(v) split, combine or reclassify any Units, or issue any other security in respect of, in lieu of or in substitution for any Units;

(vi) loan, advance, invest or make a capital contribution to or in any person;

(vii) except (A) in the ordinary course of business in connection with a promotion, job performance or workplace requirements or (B) as may be required under existing agreements, including any Benefit Plan or any Union Contract covering any Business Employee or Former Business Employee listed in Section 3.11(a) of the Seller Disclosure Schedule and made available to Purchaser prior to the date hereof, or applicable Law, (1) adopt, establish, enter into or amend in any respect or terminate any Benefit Plan or any Union Contract covering any Business Employee or Former Business Employee, (2) grant to any Business Employee or Former Business Employee any increase in base salary, wages, bonuses, incentive compensation, pension, severance or termination pay or other compensation or benefits, (3) take any action to accelerate the time of payment or vesting of any compensation or benefit for any Business Employee or Former Business Employee, (4) enter into any trust, annuity or insurance Contract or take any other action to fund or otherwise secure the payment of any compensation or benefit for any Business Employee or Former Business Employee; (5) pay to any Business Employee or Former Business Employee any compensation or benefit not required under any Benefit Plan or Union Contract as in effect on the date hereof, other than the payment of base cash compensation, in the ordinary course of business, or immaterial severance or immaterial fringe benefits that will be payable by or on behalf of Seller or the Company prior to the Closing or will constitute Selling Expenses; (6) hire any Business Employee with an expected annual total compensation in excess of \$75,000 or enter into any employment agreement, or terminate any Business Employee with an expected annual total compensation in excess of \$75,000 other than for cause (as determined by the Company in its reasonable discretion and in accordance with applicable Law), or (7) transfer or modify the job responsibilities of (x) any employee of Seller or the Company in a manner that results in such employee becoming a Business Employee or (y) any Business Employee in a manner that would result in such individual no longer meeting the definition of Business Employee;

(viii) implement any layoffs, reductions in force, early retirement programs, or voluntary or involuntary employment termination programs impacting any Business Employee;

(ix) make or change any material Tax election (other than any Tax election made in the ordinary course of business consistent with past practice), change any annual Tax accounting period, file any material amended Tax Return, surrender any right to claim a material Tax refund, consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment, or settle or compromise any material Tax claim, in each case with respect to the Company;

(x) sell or acquire (or agree to sell or acquire), convey, lease, license permit to lapse, place in the public domain or otherwise dispose of any material property or assets for consideration in excess \$100,000 in the aggregate, except for (A) sales of inventory in the ordinary course of business or (B) assets that are obsolete or no longer used by or material to the Company or the Business;

(xi) sell, transfer, lease, sublease, license, assign, permit to lapse, place in the public domain, abandon or otherwise dispose of any Company Intellectual Property, except for (A) non-exclusive licenses granted in the ordinary course of business, and (B) abandonment or other similar dispositions of non-material Intellectual Property in the ordinary course of business;

(xii) issue any note, bond or other debt agreement, obligation or security, or create, incur, assume or guarantee any Indebtedness outside of the ordinary course of business, in each case, other than trade payables in the ordinary course of business;

(xiii) disclose any trade secrets or other confidential information of the Company or the Business (except pursuant to a non-disclosure agreement entered into by the Company in the ordinary course of business);

(xiv) permit or allow any asset of the Company or the Business to become subject to any Lien (other than any Permitted Lien);

(xv) acquire any business or any corporation, partnership, association or other business organization or division or a substantial portion of the assets thereof (other than inventory), by merger, consolidation, purchase of assets or otherwise, for aggregate consideration in excess of \$100,000 or enter into any new joint venture, strategic alliance, partnership or similar venture;

(xvi) make any material change to the Company's methods of financial accounting in effect as of the date of this Agreement, except as required by the Accounting Policies or applicable Law;

(xvii) materially modify, amend, terminate, cancel or renew, or agree to any material waiver under, any of the Material Contracts, or enter into or amend any Contract that, if existing on the date hereof, would be a Material Contract, except for renewals of any such Material Contract in the ordinary course of business;

(xviii) settle any Proceeding involving the Company, the Business or any of their respective directors or officers (in their capacities as such) requiring payments in excess of \$100,000, involving injunctive or equitable relief or relating to any criminal or quasi-criminal Proceeding;

(xix) fail to maintain the Leased Property in substantially the same condition as of the date hereof, ordinary wear and tear, casualty and condemnation excepted;

(xx) enter into any Contracts with Affiliates;

(xxi) make any capital expenditure or enter into any commitment therefor in an aggregate amount in excess of \$100,000;

(xxii) fail to satisfy when due any material Liability (other than any such Liability that is being contested in good faith);

(xxiii) enter into any line of business other than the Business; or

(xxiv) authorize or agree to do, whether in writing or otherwise, any of the foregoing actions.

SECTION 5.03. Exclusive Dealing. During the period from the date of this Agreement until the earlier of the Closing or the termination of this Agreement in accordance with its terms, neither Seller nor the Company shall take, nor shall they permit their respective Representatives to take, any action to solicit, initiate or engage in discussions or negotiations with, or provide any information to or enter into any agreement with any person (other than Purchaser and/or its Representatives) concerning any purchase of the Units, the Business or any merger, sale or license of all or substantially all of the Company's assets or the Seller's assets related to the operation of the Business or similar transaction involving the Company or the Business (each such transaction, an "Alternative Transaction"). Notwithstanding the foregoing, Seller and the Company may respond to any unsolicited proposal regarding an Alternative Transaction by indicating that Seller and the Company are subject to an exclusivity agreement pursuant to this Agreement with respect to the sale of the Company and the Business and is unable to provide any information related to the Company or the Business or entertain any proposals or offers or engage in any negotiations or discussions concerning an Alternative Transaction for as long as this Agreement remains in effect. Seller shall promptly notify Purchaser of any unsolicited proposal, inquiry or offer by any person (other than Purchaser and/or its Representatives) with respect to or relating to any Alternative Transaction and shall provide Purchaser with a summary of the material terms or such proposal, inquiry or offer.

SECTION 5.04. Company Asset Transfer. Seller and the Company shall (i) take all steps necessary to effect the Asset Transfer prior to the Closing in accordance with the Asset Transfer Agreement and (ii) not amend the form of Asset Transfer Agreement without the prior written consent of Purchaser.

SECTION 5.05. Confidentiality. From and after the Closing, Seller shall keep confidential, and cause its Affiliates and cause its and their respective officers, directors, employees, advisors and other Representatives to keep confidential, all non-public information relating to the Company or the Business (“Business Confidential Information”), except (i) as required or requested by a Governmental Entity or required pursuant to Law or the rules or regulations of any securities exchange or listing authority or legal, administrative or judicial process, (ii) for information that is available on the Closing Date to the public, or thereafter becomes available to the public other than as a result of a breach of this Section 5.05, or (iii) for information disclosed in connection with the exercise of any rights or remedies provided in any Transaction Document or any Proceeding related to any Transaction Document or the enforcement of rights thereunder. In the event Seller or any of its Affiliates is required or requested by a Governmental Entity to disclose such information, Seller or its Affiliate shall promptly notify Purchaser and the Company in writing, unless prohibited by Law, which notification shall include the nature of such legal requirement and the extent of the required disclosure, and shall cooperate with Purchaser, at Purchaser’s expense, to preserve, to the extent possible, the confidentiality of such information.

SECTION 5.06. Restrictive Covenants.

(a) For a period of two (2) years after the Closing Date, Seller will not, nor will it permit its Affiliates to, directly or indirectly, (i) induce or encourage any Transferred Employee to leave the employment of Purchaser or any of its Affiliates or (ii) solicit for employment, employ or assist any other person in employing any Transferred Employee; provided, that the foregoing shall not preclude Seller or any of its Affiliates from (A) placing general solicitations for employment not specifically directed toward the Transferred Employees or (B) hiring any such Transferred Employee who (1) has had his or her employment terminated by Purchaser or any of its Affiliates for any reason, (2) has not been employed by Purchaser or any of its Affiliates within six (6) months prior to the date of hire, or (3) responds to any general solicitation permitted by the foregoing clause (A).

(b) For a period of five (5) years after the Closing Date, Seller and its Affiliates (excluding, for the avoidance of doubt, the Company) shall not, directly or indirectly, engage in the Restricted Business (as defined below) anywhere in the world, own any interest in, conduct, manage, operate or control any person engaged in the Restricted Business or actively participate in, consult with, render services for or furnish advice to any person in connection with such person’s engagement in the Restricted Business. For purposes of this Agreement, “Restricted Business” means the design, development, sale, licensing, marketing or provision of any consumer and corporate online and/or mobile food ordering service business, including without limitation the provision of delivery services for restaurants; provided, however, the Restricted Business shall not include, or in any way restrict the ability of Seller and its Affiliates from, (A) marketing and engaging in the ordinary course of business of Seller and its Affiliates (other than the Company) as conducted as of the date hereof (other than the operation of the Business), (B) marketing, facilitating, taking and confirming online and/or mobile food orders via a third party application (e.g. , Uber Eats, Delivery.com or EatStreet), subject to Section 3(a) of the Marketing Partnership Agreement, (C) processing payments for online and/or mobile food orders via a third party application, or (D) marketing, facilitating, taking, confirming, and processing payments for online and/or mobile food orders for in-restaurant consumption. For clarity but without limitation, nothing herein will affect or limit Seller’s obligations under Sections 3(a), 8(b) and 10(d) of the Marketing Partnership Agreement or under any other provisions in the Marketing Partnership Agreement that address restrictions on using Merchant Materials or APIs (as such capitalized terms are defined therein); provided, further, to the extent that Seller properly terminates the Marketing Partnership Agreement pursuant to Section 15(b) thereof, this Section 5.06(b) will be of no further force effect. In addition, for so long as the Business Confidential Information remains confidential, Seller will not, nor will it permit its Affiliates to use the Business Confidential Information for any reason except as expressly permitted by this Agreement, the Transition Services Agreement and the Marketing Partnership Agreement.

(c) Except as expressly permitted by the Transition Service Agreement and the Marketing Partnership Agreement, Seller agrees that from and after the Closing Date it will not use (and it will prevent its subsidiaries or Affiliates from using) (i) the name “Eat24” or “Eat24Hours” or any other Marks used by the Company, but excluding the Seller Names and Marks, and (ii) any Marks that are similar to, or are otherwise variations or derivatives of any of the foregoing (including translations, abbreviations, adaptations and combinations thereof). Notwithstanding anything to the contrary in this Agreement, (x) the appearance of the foregoing Marks on any other materials that are held by Seller or its subsidiaries or Affiliates (excluding, for the avoidance of doubt, the Company) for internal use only shall not be a breach of this Agreement or constitute a violation of the Intellectual Property rights of Purchaser; provided that (x) within one hundred eighty (180) days after the Closing Date, Seller shall, unless such use shall otherwise expressly permitted by or necessary to perform its obligations under the Transition Service Agreement and/or the Marketing Partnership Agreement, remove any and all such appearances from any internal usage (including, for the avoidance of doubt, sales and product literature, purchase orders, invoices, packaging, stationary, labeling, promotional products and all other similar materials), and (y) Seller and its subsidiaries and Affiliates may use the foregoing Marks and non-trademark names solely for the purposes of conveying to third parties or the general public the historical origins of the Business in a manner that is (1) consistent with past practices, (2) does not disparage Purchaser, its Affiliates or the Company and (3) required for legitimate business purposes.

(d) The parties acknowledge and agree that the amount of actual damages suffered by Purchaser in the event of an actual or threatened breach of this Section 5.06 may be difficult or impossible to accurately calculate and there may not be an adequate remedy at law available to Purchaser to fully compensate it in the event of such an actual or threatened breach. Consequently, the parties agree that in addition to any other remedy or relief to which it may be entitled, in the event of a breach or threatened breach of this Section 5.06, Purchaser and its successors and assigns shall be entitled to specific performance and/or injunctive or other equitable relief from a court of competent jurisdiction in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security), and neither Seller nor any of its Affiliates will oppose the granting of any such relief on the ground(s) that Purchaser has an adequate remedy at Law, has not proven actual damages, and/or should be required to post a bond or other security.

(e) If any provision contained in this Section 5.06 is, for any reason, held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this Section 5.06, but this Section 5.06 will be construed as if such invalid, illegal or unenforceable provision had never been contained herein. It is the intention of the parties that if any of the restrictions or covenants contained in this Section 5.06 is held to cover a geographic area or to be of a length of time that is not permitted by applicable Law, or in any way construed to be too broad or to any extent invalid, such provision will not be construed to be null, void and of no effect; instead, the parties agree that a court of competent jurisdiction will construe, interpret, reform or judicially modify this Section 5.06 to provide for a covenant having the maximum enforceable geographic area, time period and other provisions (not greater than those contained herein) as will be valid and enforceable under such applicable law.

(f) Seller expressly acknowledges and agrees that (i) each of the restrictions contained in this Section 5.06 is reasonable in all respects (including with respect to subject matter, time period and geographical area) and such restrictions are necessary to protect Purchaser's interest in, and value of, the Business (including the goodwill inherent therein), (ii) Seller is primarily responsible for the creation of such value, and (iii) Purchaser would not have entered into this Agreement or consummated the transactions contemplated by the Transaction Documents without the restrictions contained in this Section 5.06.

ARTICLE VI

Covenants of Purchaser

Purchaser covenants and agrees as follows:

SECTION 6.01. Confidentiality. Purchaser acknowledges that the information being made available to it in connection with the Acquisition and the consummation of the other transactions contemplated hereby and by the Other Transaction Documents is subject to the terms of a confidentiality agreement between Purchaser and Seller dated as of February 23, 2017 (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference. Effective upon, and only upon, the Closing, the confidentiality provisions of the Confidentiality Agreement shall terminate with respect to information relating to the Company; provided, that Purchaser acknowledges that any and all other information made available to it by or on behalf of Seller or any of its Affiliates, or any of its or their respective Representatives, concerning any Seller Subsidiary, Seller or any of its Affiliates (excluding, for the avoidance of doubt, the Company and the Business) shall remain subject to the terms and conditions of the Confidentiality Agreement after the Closing Date.

SECTION 6.02. No Use of Seller Names and Marks; Transitional License.

(a) Except as expressly permitted by the Transition Service Agreement and the Marketing Partnership Agreement, Purchaser shall, and shall cause the Company to, promptly, and in any event within: (i) forty-five (45) Business Days after the Closing Date, (A) amend or terminate any Governing Documents, certificates of assumed names or “doing business as” filings by such entities so as to remove from such documents, certificates or filings and eliminate its right to use any of the Seller Names and Marks, and (B) remove any and all Seller Names and Marks from any websites and other online media operated in connection with the Business (including any social media, Internet sites or other or similar uses); (ii) six (6) months after the Closing Date, remove any and all Seller Names and Marks from any signage on any Leased Property or other assets, regardless of the form or medium (other than sales and product literature, purchase orders, invoices, shipping documents, packaging and labeling and similar materials to the extent permitted under the Transitional License); and (iii) ninety (90) days after the Closing Date, revise or replace all sales and product literature, purchase orders, invoices, shipping documents, packaging and labeling and all other similar materials (regardless of the form or medium) to delete, and cease use of, all references to any of the Seller Names and Marks; provided, that, with respect to the foregoing clause (iii), for a period of six (6) months from the Closing Date (the “Transitional Period”), Purchaser and the Company may continue to distribute sales and product literature that uses any of the Seller Names and Marks in the ordinary course of business and only in substantially the same form, and to substantially the same extent, that such sales and product literature exist on the Closing Date (the “Existing Materials”) or are otherwise produced in the ordinary course of business within the thirty (30)-day period after the Closing Date (together with the Existing Materials, the “Transitional Materials”); provided, in each case, that Purchaser complies, and causes the Company to comply, with the terms and conditions set forth herein (including the terms of the Transitional License granted below) and all applicable Laws.

(b) Subject to the terms and conditions set forth herein, and effective only upon the occurrence of the Closing and during the Transitional Period, Seller hereby grants, on behalf of itself and its Affiliates, to Purchaser and the Company, a limited, royalty-free, paid-up non-exclusive right and license to use those Seller Names and Marks and copyrights and other Intellectual Property owned by Seller or any of its Affiliates (the “Licensed IP”) that are used, as of the Closing Date, by Seller and the Company in the manufacture, distribution, marketing and sale of the products and services of the Company included in the Transitional Materials, to the extent necessary to allow Purchaser and the Company to so use such Transitional Materials during the Transitional Period in the ordinary course of business in the six (6) months following the Closing Date (the “Transitional License”). By the end of the Transitional Period, Purchaser shall, and shall cause the Company to, return to Seller (or its designee) or destroy any remaining Transitional Materials.

(c) As between the parties, Seller is the sole and exclusive owner of all right, title and interest in and to the Seller Names and Marks and all rights related thereto and goodwill associated therewith and all Licensed IP; and all uses of the Seller Names and Marks and the goodwill arising therefrom shall inure solely to the benefit of Seller. Any use by Purchaser or the Company of any of the Seller Names and Marks during the Transitional Period is subject to each of their use of the Licensed IP, including the Seller Names and Marks included therein, in a form and manner, and with standards of quality, in effect by Seller and its Affiliates with respect thereto as of the date of this Agreement and in accordance with all applicable Laws.

(d) Seller hereby expressly reserves all rights in and to the Seller Names and Marks and the Licensed IP, except solely for the limited non-exclusive license granted to Purchaser and the Company during the Transitional Period. After the Closing, Purchaser shall not, and shall cause each of its Affiliates to not, hold itself out as having any affiliation with Seller or any of its Affiliates.

(e) Notwithstanding anything to the contrary, (i) the appearance of the Seller Names and Marks on any other materials that are held by the Company for internal use only or as required by or permitted as fair use or otherwise under applicable Law shall not be a breach of this Agreement or constitute a violation of the Intellectual Property rights of Seller or its Affiliates so long as Purchaser and the Company endeavor to remove such appearances in the ordinary course of business, and (ii) Purchaser and the Company may use the Seller Names and Marks and non-trademark names to convey to third parties or the general public the historical origins of the Business, including by referring to such origins on their websites and in their advertising, marketing and promotional materials.

ARTICLE VII

Mutual Covenants

SECTION 7.01. Publicity. Seller and Purchaser agree that, no public release or announcement concerning the Transaction Documents or the transactions contemplated thereby shall be issued by either party or its Affiliates without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), except as such release or announcement may be required by applicable Law or the rules or regulations of any U.S. or non-U.S. securities exchange or listing authority, in which case the party required to make the release or announcement shall allow the other party a reasonable opportunity to comment on such release or announcement in advance of such issuance and the party issuing such release shall consider any reasonable comments in good faith; provided, that each of Seller, the Company and Purchaser may make internal announcements to their respective employees that are consistent with such party's prior public disclosures regarding the transactions contemplated by the Transaction Documents and that otherwise have been made in accordance with this Section 7.01. Seller and Purchaser agree that the initial press release to be issued with respect to the transactions contemplated by the Transaction Documents shall be in the form mutually agreed upon by Seller and Purchaser.

SECTION 7.02. Efforts.

(a) Cooperation. Subject to the terms and conditions set forth in this Agreement, Seller and Purchaser shall cooperate with each other and use (and shall cause their respective Affiliates to use) their respective commercially reasonable best efforts to take or cause to be taken all actions, and to do or cause to be done all things, reasonably necessary, proper or advisable on their part under this Agreement and applicable Law to consummate the transactions contemplated by this Agreement as soon as practicable and in any event prior to the Termination Date or Extended Termination Date, as applicable, including using commercially reasonable best efforts to (i) prepare and file as promptly as practicable all documentation to effect all necessary reports and other Filings and to obtain as promptly as practicable all Consents and registrations necessary to be obtained from any Governmental Entity in order to consummate the transactions contemplated by this Agreement and (ii) execute and deliver any additional instruments reasonably necessary to consummate the Acquisition and the other transactions contemplated by this Agreement on the terms and conditions contemplated hereby. Subject to applicable Laws relating to the exchange of information, Purchaser and Seller shall have the right to review in advance, and, to the extent practicable, each will consult with the other on and consider in good faith the views of the other in connection with, all of the information relating to Purchaser or Seller, the Company or the Business, as the case may be, and any of their respective Affiliates, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the Acquisition and the other transactions contemplated by this Agreement. In exercising the foregoing rights, Seller and Purchaser shall act reasonably and as promptly as practicable.

(b) Information. Subject to applicable Laws, Seller and Purchaser shall, upon reasonable request by the other, furnish the other with all information concerning itself, its Affiliates, directors, officers or equityholders, as applicable, that is reasonably necessary for making any Filing or obtaining any Consent, and such other matters as may be reasonably necessary or advisable in connection with any Filing made (or to be made) by or on behalf of Purchaser, Seller or any of their respective Affiliates to any Governmental Entity in connection with the Acquisition and the other transactions contemplated by this Agreement, including under the HSR Act and any other Antitrust Law. Notwithstanding the foregoing, in connection with the performance of each party's respective obligations, Seller and Purchaser may, as each determines is reasonably necessary, designate competitively sensitive material provided to the other pursuant to this Section 7.02(b) as "Outside Counsel Only." Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to directors, officers or employees of the recipient unless express permission is obtained in advance from the source of the materials (Seller or Purchaser, as the case may be) or its legal counsel. Notwithstanding anything to the contrary in this Section 7.02(b), materials provided to the other parties or their counsel may be redacted to remove references concerning the valuation of the Business or the Company or information otherwise not germane to regulatory review.

(c) Status. Subject to applicable Laws and the instructions of any Governmental Entity, Seller and Purchaser shall keep the other apprised of the status of matters relating to Consents or clearances of any Governmental Entity of the Acquisition and the other transactions contemplated by this Agreement, including promptly furnishing the other with copies of notices or other communications received by Seller or Purchaser, as the case may be, or any of their respective Affiliates, from any Governmental Entity with respect to such Consents or clearances, provided, that such materials may be redacted as necessary (i) to address good faith legal privilege or confidentiality concerns or (ii) to comply with applicable Law. Subject to applicable Laws and the instructions of any Governmental Entity, neither Seller nor Purchaser shall permit any of their respective Affiliates, officers or any other Representatives to participate in any meeting with any Governmental Entity in respect of any Consents, clearances, Filings, investigation or other inquiry with respect to the Acquisition and the other transactions contemplated by this Agreement unless such party consults with the other party in advance and, to the extent permitted by such Governmental Entity, gives the other party the opportunity to attend and participate thereat.

(d) Antitrust Matters.

(i) Subject to the terms and conditions set forth in this Agreement, without limiting the generality of the undertakings pursuant to this Section 7.02, each of Seller, on the one hand, and Purchaser, on the other hand, agree to take or cause to be taken the following actions until the earlier to occur of the Closing Date or the termination of this Agreement in accordance with its terms:

(A) as soon as practicable, and in any event with respect to the Filing under the HSR Act, no later than ten (10) Business Days following the date of this Agreement, to file (1) the initial pre-merger notifications with respect to this Agreement and the transactions contemplated herein required under the HSR Act (which filing, including the exhibits thereto, shall not be shared or otherwise disclosed to the other parties, except for providing copies of Item 4 documents to outside counsel of each party, with any redactions as permitted by this Section 7.02) for Seller and Purchaser, in each case, requesting early termination of the waiting period with respect to the transactions contemplated hereby and (2) any notification or other form necessary to obtain any consents, clearances or approvals required under or in connection with any other Antitrust Law; provided, however, it is agreed and acknowledged that Purchaser shall pay the filing fee required in connection with the Filing under the HSR Act;

(B) to promptly provide to each Governmental Entity with jurisdiction over enforcement of any applicable Antitrust Law (a “ Governmental Antitrust Entity”) non-privileged information and documents requested by any such Governmental Antitrust Entity in connection with obtaining any such consent, clearance, approval, or authorization of such Governmental Antitrust Entity that is necessary, proper or advisable to permit consummation of the transactions contemplated hereby; and

(C) to use reasonable best efforts to take, and to cause each of its subsidiaries to take, any and all actions necessary to obtain any Consents or clearances required under or in connection with any Antitrust Law and enable all waiting periods under any Antitrust Law to expire and Purchaser shall use reasonable best efforts to avoid or eliminate each and every impediment under any Antitrust Law asserted by any Governmental Entity, in each case, to enable the transactions contemplated by this Agreement to occur prior to the Termination Date or the Extended Termination Date, as applicable, including using reasonable best efforts to comply with, and modifying where appropriate, any requests for additional information by any Governmental Entity.

(ii) Notwithstanding the foregoing, nothing in this Section 7.02(d) or otherwise in this Agreement shall require Purchaser or any of its subsidiaries to propose or agree to accept any undertaking or condition, to enter into any consent decree, to make any divestiture, or take any other action that, in the reasonable judgment of Purchaser, could be expected to limit the right of Purchaser or any its subsidiaries to own or operate all or any portion of their respective businesses or assets (including the Company following the Closing) or otherwise receive the full benefits of the Acquisition or the Marketing Partnership Agreement.

(iii) Nothing in this Section 7.02(d) shall require Seller or its Affiliates or Purchaser or its Affiliates to take or agree to take any action with respect to its business or operations unless the effectiveness of such agreement or action is conditioned upon the Closing.

(iv) Seller and its Affiliates shall not, without the prior written consent of Purchaser, publicly or before any Governmental Entity or other third party, offer, suggest, propose or negotiate, and shall not commit to or effect, by consent decree, hold separate order or otherwise, any sale, license, assignment, transfer, divestiture, hold separate or other disposition of any assets, business or portion of business, or the imposition of any restriction, requirement or limitation on the operation of any business or assets.

SECTION 7.03. Notification of Certain Matters. From the date hereof until the earlier to occur of the Closing and the termination of this Agreement in accordance with its terms, Purchaser and Seller shall promptly notify each other of (i) any notice or other communication from any Governmental Entity in connection with any Proceeding or investigation commenced or, to the knowledge of Purchaser or to the knowledge of Seller, as applicable, threatened against, relating to or involving or otherwise affecting a party which relates to this Agreement or the Other Transaction Documents or the transactions contemplated hereunder or thereunder or (ii) to the knowledge of Purchaser or to the knowledge of Seller, any change, condition or event that (A) renders or would reasonably be expected to render any representation or warranty of such party (including, with respect to Seller, the Company) set forth in this Agreement to be untrue or inaccurate to an extent such that the conditions set forth in Section 8.01 or Section 8.02, as applicable, would not be satisfied if the Closing were to then occur or (B) results or would reasonably be expected to result in any failure of such party to comply with or satisfy in any material respect any covenant, condition or agreement to be completed with or satisfied by such party; *provided*, that no such notification, nor any failure to make such notification, shall affect any of the representations, warranties, covenants, rights or remedies, or the conditions to the obligations of, the parties.

SECTION 7.04. Tax Matters.

(a) The amount of any Tax refunds or credits in lieu of cash Tax refunds with respect to the Company for any Pre-Closing Tax Period (net of any Taxes incurred in respect of the receipt or accrual of such refunds and any other expenses attributable to obtaining and receiving such refunds or credits) shall be for the account of Seller, other than any refund or credit that was reflected as an asset in the calculation of the Closing Working Capital pursuant to Section 2.02. Purchaser shall forward, or cause to be forwarded, to Seller the amount of such refund or credit within ten (10) days after such refund is received or after such credit is applied against another Tax, as the case may be. To the extent any such refund or credit is subsequently disallowed or required to be returned to the applicable Taxing Authority, Seller agrees to promptly repay the amount of such refund or credit, together with any interest, penalties or other additional amounts imposed by such Taxing Authority, to Purchaser. For the purposes of this Section 7.04(a), where it is necessary to apportion the economic benefit of a refund or credit for Taxes for a Straddle Period, such benefit shall be apportioned between Seller and Purchaser using the principles of Section 7.04(b). If requested by Seller, Purchaser shall take all reasonable action necessary to promptly claim, at the sole cost and expense of Seller, such Tax refunds or credits in lieu of cash Tax refunds to the extent permitted by applicable Law.

(b) In the case of any Straddle Period: (i) real, personal and intangible property Taxes or other similar ad valorem Taxes imposed on a periodic basis (“Periodic Taxes”) for the Pre-Closing Tax Period shall be equal to the amount of such Periodic Taxes for the entire Straddle Period (disregarding any increase or decrease in Tax for such period as a result of the Acquisition) multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of days in the Straddle Period; and (ii) Taxes (other than Periodic Taxes) for the Pre-Closing Tax Period shall be computed on a closing of the books basis as if such taxable period ended as of the close of business on the Closing Date.

(c) All Transfer Taxes (including any Transfer Taxes attributable to the Asset Transfer) shall be borne 50% by Seller and 50% by Purchaser. Notwithstanding this Section 7.04(c), Purchaser and Seller agree that any Tax Returns that must be filed in connection with Transfer Taxes shall be prepared and filed when due by the party primarily or customarily responsible under the applicable Law for filing such Tax Returns, and such party will use its commercially reasonable efforts to provide such Tax Returns to the other party prior to the due date for such Tax Returns.

(d) (i) Seller (or its Affiliates) shall prepare (or cause to be prepared) all Tax Returns of the Company for taxable periods ending on or before the Closing Date (all such Tax Returns, “Seller Prepared Tax Returns”) in a manner consistent with past practice of the Company, except as required by applicable Law. Seller (or its Affiliates) shall timely file such Seller Prepared Tax Returns and shall pay the Taxes shown as due with respect thereto (except to the extent such Taxes are (A) treated as a liability for purposes of calculating the Final Purchase Price or (B) attributable to actions taken by Purchaser or the Company after the Closing on the Closing Date outside the ordinary course of business, which Taxes shall be paid by Purchaser). Seller shall deliver to Purchaser a draft of each such Seller Prepared Tax Return at least twenty (20) days before the date such Seller Prepared Tax Return is required to be filed; provided, that in the case Purchaser delivers to Seller within ten (10) days after receiving such Seller Prepared Tax Return a written statement describing its objections (if any) thereto, Seller shall consider any reasonable objections in good faith; provided, further, that Seller is only required to provide Purchaser with information relating to the Company and shall not provide any Tax Returns of the Seller Tax Group or provide any information of any member of the Seller Tax Group (other than the Company). Purchaser and Seller shall cooperate in good faith in determining whether to file single combined IRS Forms 1099 for Company transactions for the entire calendar year 2017.

(ii) Purchaser shall prepare (or cause to be prepared) all Tax Returns of the Company with respect to a Straddle Period that are due after the Closing Date other than a Tax Return with respect to a Seller Tax Group of which the Company is a member (“Purchaser Prepared Tax Returns”). Purchaser shall prepare such Purchaser Prepared Tax Return in a manner consistent with past practice of the Company, except to the extent such past practice is not more likely than not to be upheld under applicable Law and shall deliver to Seller a draft of each such Purchaser Prepared Tax Return at least twenty (20) days before the date such Purchaser Prepared Tax Return is required to be filed; provided, that in the case Seller provides to Purchaser within ten (10) days after receiving such Purchaser Prepared Tax Return a written statement describing all of its objections (if any) thereto, Purchaser shall consider any reasonable objections in good faith. Purchaser shall cause the Company to execute and timely file, as prepared, all Purchaser Prepared Tax Returns. At least two (2) days before payment of Taxes (including estimated Taxes) is due to the applicable Taxing Authority with respect to the Purchaser Prepared Tax Returns, Seller shall pay Purchaser for any Taxes shown as due on any such Purchaser Prepared Tax Return that is filed by Purchaser to the extent such Taxes are the responsibility of Seller (as determined in accordance with Section 10.01).

(iii) Purchaser and Seller shall reasonably cooperate, and shall cause their respective Affiliates and Representatives to reasonably cooperate (including by providing any necessary powers of attorney), in preparing and filing all Tax Returns described in this Section 7.04(d) (subject to this Section 7.04(d)), and in resolving all disputes and audits with respect to Taxes and in other matters relating to Taxes for which the applicable statute of limitations has not expired, including by maintaining and making available to each other, as reasonably necessary, records with respect to such Taxes. Seller shall be entitled to (1) continue discussions and negotiations of the matters set forth on Section 7.04(d)(iii) of the Seller Disclosure Schedule and (2) continue to conduct and control, through counsel of Seller's choosing and at Seller's sole cost and expense, the resolution of such matters and shall be permitted to settle or compromise such tax matters upon Purchaser's prior written consent (which consent shall not be unreasonably withheld or delayed except to the extent such settlement and/or compromise imposes monetary obligations on Purchaser, its Affiliates or the Company and/or involving injunctive or equitable relief applicable to Purchaser, its Affiliates or the Company, in which case such consent may be withheld or granted in Purchaser's sole discretion). Purchaser shall have the right to participate at its own cost and expense in such matters.

(e) Except (x) upon the prior written consent of Seller or (y) to the extent an applicable Tax position (including an interpretation of whether an action is required under applicable Law) (1) is not "more likely than not" supportable under applicable Law and with respect to Specified Pre-Closing Taxes it is probable that a liability has been incurred under applicable ASC Guidelines so that the item must be accrued as a liability on the financial statements of Purchaser or any of its Affiliates (including the Company), and (2) is inconsistent with a Tax or financial reporting position (including any such interpretation of whether an action is required under applicable Law) taken by Purchaser or any of its Affiliates in a similar situation with respect to the same Law or financial reporting guidelines, none of Purchaser or any of its Affiliates (including the Company) shall (i) amend any Tax Return for any Pre-Closing Tax Period, (ii) make any Tax election regarding the Company with respect to a Pre-Closing Tax Period, (iii) surrender any right to claim a refund for Taxes of the Company of which Seller is entitled to receive payment thereof, (iv) file any Tax Return of the Company with respect to a Pre-Closing Tax Period in any jurisdiction if the Company did not file a comparable Tax Return involving similar Tax items in such jurisdiction in the immediately preceding Tax period, or (v) initiate any discussion or enter into any voluntary disclosure program (or similar program or agreement) with a Governmental Entity regarding any Tax (whether asserted or unasserted) or Tax Return with respect to the Company relating to a Pre-Closing Tax Period, in each case if such action could affect the Taxes of Seller or result in any indemnity claim against Seller under this Agreement. In the event Purchaser and Seller are unable to agree as to whether an applicable Tax position is "more likely than not" supportable under applicable Law (and with respect to Specified Pre-Closing Taxes is required to be accrued as a liability on the financial statements), or whether an applicable Tax position is inconsistent with a Tax or financial reporting position taken by Purchaser or any of its Affiliates in a similar situation with respect to the same Law or financial reporting guidelines, Purchaser and Seller shall submit such matter to the Accounting Firm for resolution, in accordance with the procedural principles of Section 2.02(c).

SECTION 7.05. Employee Matters.

(a) As soon as practicable following the parties' execution of this Agreement (but in no event later than fifteen (15)] Business Days thereafter), Purchaser shall, or shall cause its Affiliate (including, for the avoidance of doubt, the Company) to, extend offers of employment effective as of the Closing to the active Business Employees set forth on Section 7.05(a) of the Seller Disclosure Schedule. Each such offer of employment shall be on terms determined by Purchaser in its sole discretion; provided, however, if any active Business Employee receives an offer of employment providing for (i) an initial base salary or wage rate that is not substantially comparable to the base salary or wage rate provided to such Business Employee immediately prior to the Closing and (ii) providing for an initial opportunity to earn a long-term incentive award with a target amount that is not substantially comparable to the target long-term incentive award provided by Seller immediately prior to the date hereof, such Business Employee shall be deemed not to have received an offer of employment pursuant to this Section 7.05(a) for purposes of determining satisfaction of the condition to closing set forth in Section 8.01(f). Each active Business Employee who accepts employment with Purchaser or its Affiliate as of the Closing shall be referred to herein as "Transferred Employees."

(b) Effective as of the Closing, the Transferred Employees shall cease active participation in the Benefit Plans except as provided by the terms of any such Benefit Plan or applicable Law. Without limiting any other provision of this Agreement, Seller shall remain liable for all eligible claims for benefits and claims under the Benefit Plans that are incurred by the Transferred Employees (regardless of when such claims are reported or disclosed). Notwithstanding any other provision of this Agreement, any Business Employee (i) who as of the Closing Date is short-term disabled or receiving or entitled to receive short-term disability under a Benefit Plan and who subsequently becomes eligible to receive long-term disability benefits, or (ii) as of the Closing Date is receiving or entitled to receive long-term disability benefits, shall become eligible or continue to be eligible, as applicable, to receive short-term and/or long-term disability benefits as applicable under a short-term and/or long-term disability plan maintained by Seller. Seller shall be solely responsible for satisfying the continuation coverage requirements of Section 4980B of the Code for all individuals who are "M&A qualified beneficiaries" as such term is defined in Treasury Regulation Section 54.4980B-9.

(c) On or prior to the Closing, Seller shall pay to each Transferred Employee all amounts in respect of vacation and other paid time off earned but not taken by such Transferred Employee through the Closing; provided, however, Purchaser shall have no commitment, Liability or obligation for, and Seller and its Affiliates shall hold Purchaser harmless with respect to, all such amounts payable to any Transferred Employee; provided further, Purchaser shall have no obligation to honor after the Closing any vacation or other paid time off earned by any Transferred Employee prior to the Closing. After the Closing, each Transferred Employee's eligibility for vacation and other paid time off shall be determined under Purchaser's policies.

(d) This Section 7.05 shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this Section 7.05, express or implied, shall confer upon any other person any rights or remedies of any nature whatsoever (including any third-party beneficiary rights) under or by reason of this Section 7.05. Nothing contained in this Section 7.05, express or implied, shall be construed to establish, amend or modify any benefit or compensation plan, program, policy, Contract, agreement or arrangement or to limit the ability of Purchaser or any of its Affiliates to amend, modify or terminate any benefit or compensation plan, program, policy, Contract, agreement or arrangement. The parties hereto acknowledge and agree that the terms set forth in this Section 7.05 shall not create any right in any Transferred Employee or any other person to any employment or service or continued employment or service or any term or condition of employment or service with Purchaser or any of its Affiliates or compensation or benefits of any nature or kind whatsoever, or limit the ability of Purchaser or any of its Affiliates to terminate the employment or service of any person at any time and for any or no reason.

SECTION 7.06. Intercompany Arrangements; Termination of Contracts.

(a) Each of Seller and Purchaser acknowledges and agrees that except as otherwise provided in any Other Transaction Document and except as set forth on Section 7.06 of the Seller Disclosure Schedule, upon the Closing, all Contracts or other arrangements (including intercompany balances) between Seller or any of its Affiliates (other than the Company), on the one hand, and the Company, on the other hand, that were entered into prior to the Closing will be canceled, terminated or extinguished, as the case may be, without payment or Liability.

(b) Seller will terminate or cause to be terminated (i) on or prior to the Closing Date, each of the Contracts listed in Section 7.06(b) of the Seller Disclosure Schedule and (ii) as of the day prior to the Closing Date, any Tax sharing or similar agreement between the Company and any other party and all powers of attorney relating to Tax matters of the Company (the Contracts referred to in (i) and (ii), the “Terminated Contracts”). Following the termination of the Terminated Contracts in accordance with this Section 7.06, no such Contract shall have further force or effect for any past or future taxable period.

SECTION 7.07. Replacement of Credit Support. Seller and Purchaser shall cooperate and use their respective reasonable best efforts to arrange for replacement arrangements, effective as of the Closing, for all guarantees, covenants, indemnities, surety bonds, letters of credit, comfort letters or similar assurances of credit support provided by Seller or any of its Affiliates (other than the Company) for the benefit of the Company or the Business that are in existence as of the Closing set forth on Section 3.20 of the Seller Disclosure Schedule, and shall use their respective reasonable best efforts to obtain releases indicating that Seller and its Affiliates (other than the Company) have no liability with respect thereto, in each case, reasonably satisfactory to Seller. If any of the foregoing guarantees, covenants, indemnities, surety bonds, letters of credit, comfort letters or similar assurances of credit support have not been released as of the Closing Date, Seller and Purchaser shall use their respective reasonable best efforts after the Closing Date to cause any of the foregoing to be released; provided, that, Purchaser shall indemnify and hold harmless Seller and its Affiliates (other than the Company) from and against any Losses suffered or incurred by them after the Closing Date in respect to the Company in connection with any of the foregoing guarantees, covenants, indemnities, surety bonds, letters of credit, comfort letters or similar assurances of credit support. The foregoing shall not require Purchaser to assume any liability or incur expense in connection with exercising such reasonable best efforts that Purchaser is not otherwise obligated to assume or incur hereunder.

SECTION 7.08. Cooperation Regarding Contract Consents. Prior to, on and following the Closing, each of Seller and Purchaser agree to (a) use its reasonable best efforts to cooperate with the other party, (b) take all reasonable actions within its control reasonably requested by the other party, in each case, in order to obtain the Required Consents and the consents set forth on Section 7.08(b) of the Seller Disclosure Schedule (the “Material Consents”) and (c) take all reasonable actions within its control to complete the tasks set forth on Section 7.08(c) of the Seller Disclosure Schedule. If despite a party’s reasonable best efforts, the parties are not able to obtain a Required Consent or Material Consent from one or more of such third persons, Purchaser and Seller shall work together in good faith to determine a reasonable alternative arrangement for the Company to receive the benefit of such underlying Contract(s) at no material incremental cost to Purchaser or its Affiliates (including, for the avoidance of doubt, the Company). All such Required Consents or Material Consents shall be in form and substance reasonably acceptable to Purchaser and shall be made available to Purchaser following execution thereof. For the avoidance of doubt, nothing in this Section 7.08 nor any alternative arrangements entered into pursuant to the foregoing sentence shall be deemed to satisfy the condition set forth in Section 8.01(d), which may only be waived by Purchaser in its sole discretion.

SECTION 7.09. Post-Closing Cooperation.

(a) Access to Records. After the Closing, except as prohibited by applicable Law, upon reasonable advance written notice, each of Seller and Purchaser shall furnish or cause to be furnished to each other and their respective Representatives reasonable access, during normal business hours, to such information, Records (including furnishing copies thereof) and assistance (including access to personnel) relating to the conduct of the Business and the Company prior to the Effective Time (to the extent within the control of such party) as is reasonably necessary (i) for financial reporting and accounting matters, (ii) to facilitate the investigation, litigation, settlement and final disposition of any claims that may have been or may be made by or against Seller, Purchaser or any of their respective Affiliates or (iii) in connection with any investigation by any Governmental Entity. Purchaser and Seller each shall reimburse the other party for reasonable and documented out-of-pocket costs and expenses incurred in assisting the other party or their respective Affiliates pursuant to this Section 7.09. Neither Seller nor Purchaser shall be required by this Section 7.09 to take any action that would unreasonably interfere with the conduct of its or its Affiliates’ business or unreasonably disrupt its or its Affiliates’ normal operations.

(b) Retention to Records. Each of Seller, Purchaser and the Company agrees that, for a period of not less than seven (7) years following the Closing Date (or such longer period as may be required by applicable Law), it shall not destroy or otherwise dispose, or permit the destruction or disposal, of any of the Records relating to the Business in existence on the Closing Date in its or its Affiliates’ possession. Each of Seller, Purchaser and the Company shall have the right to destroy all or part of such Records after the seventh (7th) anniversary of the Closing Date by giving the other party twenty (20) Business Days’ prior written notice of such intended disposition and by offering to deliver to such other party, at such other party’s expense, custody of such Records as it intends to destroy.

(c) Misallocation of Records. In the event that, at or after the Closing, (i) any Records relating to the Company or the Business is in or comes into the possession of Seller or any of its Affiliates, Seller shall promptly deliver such document or information to Purchaser or (ii) any Records relating to any Seller Subsidiary or Seller or any of their respective Affiliates (other than the Company or with respect to the Business), is in or comes into the possession of Purchaser or any of its Affiliates, Purchaser shall promptly deliver such document or information to Seller.

(d) Misallocation of Assets. If, following Closing, either party discovers that the Company owns any right, property, asset or Liability that was not a Transferred Asset or constituted an Excluded Liability, then any such right, property, asset or Liability shall be deemed to have been held in trust by the Company following Closing for Seller or its applicable Affiliate, and the Company shall promptly transfer, assign and convey such right, property, asset or Liability to Seller (or any of its Affiliates as designated by Seller) without any consideration therefor. If, following Closing, any party discovers that any Transferred Asset or Assumed Liability was not transferred to the Company as part of the consummation of the Asset Transfer or the other transactions contemplated by this Agreement, then any such right, property, asset or Liability shall be deemed to have been held in trust by Seller or its applicable Affiliate following Closing for the Company, and Seller shall or shall cause its Affiliate to promptly transfer, assign and convey such Transferred Asset or Assumed Liability, as applicable, to the Company (or any of its Affiliates as designated by the Company or Purchaser) without additional consideration therefor.

(e) Payments. Seller shall, and shall cause its Affiliates to, promptly pay or deliver to the Company any monies or checks which have been sent to Seller or such Affiliates after the Closing Date by restaurants, corporate clients, suppliers or other contracting parties of the Company in respect of the Transferred Assets or the Business or to the extent such monies or checks should have otherwise been sent to the Company or paid for the benefit of the Business. The Company shall promptly pay or deliver to Seller or its designees any monies or checks that have been sent to the Company after the Closing Date by restaurants, corporate clients, suppliers or other contracting parties, to the extent such monies or checks should have otherwise been sent to Seller or its Affiliates. If, at any time after the Closing, an invoice, bill, purchase order or other similar documentation in respect of assets or services provided by or to the Business from any restaurant, corporate client, supplier or other contracting party of the Company is received by Seller or its Affiliates and Seller or such Affiliate actually pays any amount with respect thereto, upon receipt of written notice and reasonable supporting documentation from Seller, the Company shall promptly reimburse Seller or such Affiliate for any and all such amounts actually paid by Seller or such Affiliate. If, at any time after the Closing, an invoice, bill, purchase order or other similar documentation in respect of assets or services provided by or to the business operated by Seller and its Affiliates after the Closing from any restaurant, corporate client, supplier or other contracting party of Seller or its Affiliates is received by Purchaser or its Affiliates (including the Company) and Purchaser or such Affiliate actually pays any amount with respect thereto, upon receipt of written notice and reasonable supporting documentation from Purchaser, Seller shall promptly reimburse Purchaser or such Affiliate for any and all such amounts actually paid by Purchaser or such Affiliate.

(f) Further Assurances. From time to time at or after the Closing Date, at the request of the other, Seller and Purchaser each will execute and deliver, or cause to be executed and delivered, such other instruments of conveyance, assignment, transfer and delivery and take such actions as the other parties reasonably may request in order to consummate, complete and carry out the Acquisition and the other transactions contemplated hereby.

(g) Specified Matters. Seller shall be entitled to (i) continue discussions and negotiations of the matters set forth on Section 7.09(g) of the Seller Disclosure Schedule (the “Specified Matters”) and (ii) continue to conduct and control, through counsel of Seller’s choosing and at Seller’s sole cost and expense, the resolution of such matters and shall be permitted to engage in any administrative activities necessary to finalize the Specified Matters in accordance with the applicable parties’ settlement agreement; *provided, however*, any settlement or compromise of such Specified Matters that varies from the settlement agreements previously made available to Parent relating to such Specified Matters shall require Purchaser’s prior written consent (which consent shall not be unreasonably withheld or delayed except to the extent such settlement and/or compromise imposes monetary obligations on Purchaser, its Affiliates or the Company and/or involves injunctive or equitable relief applicable to Purchaser, its Affiliates or the Company, in which case such consent may be withheld or granted in Purchaser’s sole discretion). Purchaser shall have the right to participate in the conduct of the settlement or compromise of the Specified Matters at its own cost and expense in such matters. Seller shall, in connection with the Specified Matters, use its reasonable best efforts to (i) keep Purchaser reasonably informed with respect to the status thereof, including, by promptly providing Purchaser copies of all substantive written correspondence relating to any Specified Matter and (ii) promptly notify Purchaser of any substantive communication received by the Company from a Governmental Entity with respect to any Specified Matter.

ARTICLE VIII

Conditions to Closing

SECTION 8.01. Conditions to Obligation of Purchaser. The obligation of Purchaser to consummate the Closing and effect the transactions contemplated by this Agreement is subject to the satisfaction (or, to the extent permitted by applicable Law, waiver by Purchaser) as of the Closing of the following conditions:

(a) Representations and Warranties; Covenants. The representations and warranties of Seller and the Company made in (i) Section 3.01 (Organization, Standing and Authority; Execution and Delivery; Enforceability), Section 3.03 (Capitalization; Subsidiaries), Section 3.16 (Sufficiency of Assets) or Section 3.19 (Brokers) of this Agreement (each such representation, a “Seller Fundamental Representation”) shall be true and correct in all material respects as of the date of this Agreement and as of the Closing as though made as of such time, except to the extent such representations and warranties expressly relate to an earlier time (in which case, such representations and warranties shall be true and correct in all respects as of such earlier time), (ii) Section 3.12(a) (Absence of Company Material Adverse Effect) shall be true and correct in all respects as of the date of this Agreement and as of the Closing as though made as of such time and (iii) Article III of this Agreement (other than those listed in the preceding clauses (i) and (ii)) shall be true and correct as of the date of this Agreement and as of the Closing as though made as of such time (except to the extent such representations and warranties expressly relate to an earlier time, in which case, such representations and warranties shall be true and correct as of such earlier time), except for such failure to be so true and correct that has not had or would not be reasonably likely to, individually or in the aggregate, result in a Company Material Adverse Effect (without giving effect to any “materiality” or “Company Material Adverse Effect” or similar qualifications or limitations set forth therein). Each of Seller and the Company shall have performed or complied in all material respects with each of the obligations, agreements and covenants required by this Agreement to be performed or complied with by Seller or the Company by the time of the Closing. Each of Seller and the Company shall have delivered to Purchaser a certificate dated the Closing Date and signed by an authorized officer of each of Seller and the Company confirming the foregoing provisions of this Section 8.01(a) (collectively, the “Seller Officer Certificates”).

(b) No Injunctions or Restraints. No Law or Injunction enjoining or otherwise prohibiting the consummation of the Acquisition shall be in effect.

(c) Governmental Approvals. The waiting period (and any extension thereof) applicable to the consummation of the Acquisition under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) shall have expired or been terminated and the required approvals and waiting periods under the other applicable Antitrust Laws set forth on Section 8.01(c) of the Seller Disclosure Schedule shall have been received, expired, or been terminated.

(d) Third Party Consents. Seller and the Company shall have obtained and delivered to Purchaser the Consents set forth on Section 8.01(d) of the Seller Disclosure Schedule (the “Required Consents”).

(e) Asset Transfer. The Asset Transfer shall have been consummated in accordance with the terms of the Asset Transfer Agreement and Seller and the Company shall have delivered to Purchaser a duly executed copy of the Asset Transfer Agreement.

(f) Employment Matters. At least seventy percent (70%) of the Business Employees who have received offers of employment pursuant to Section 7.05(a) shall have accepted employment with Purchaser or its Affiliate effective as of the Closing; provided, however, in an effort to satisfy this condition, Seller shall be permitted to make available to Purchaser for an offer of employment a replacement Business Employee of comparable experience and position for any Business Employee who refuses an offer of employment from Purchaser or one of Purchaser’s Affiliates, and Purchaser shall be required to make an offer of employment consistent with Section 7.05(a).

(g) Other Closing Deliverables. Seller and the Company shall have delivered, or caused to be delivered, to Purchaser the items and documents set forth in Section 2.01(b).

SECTION 8.02. Conditions to Obligation of Seller and the Company. The obligation of Seller and the Company to consummate the Closing and effect the transactions contemplated by this Agreement is subject to the satisfaction (or, to the extent permitted by applicable Law, waiver by Seller) as of the Closing of the following conditions:

(a) Representations and Warranties; Covenants. (i) The representations and warranties of Purchaser made in Section 4.01 of this Agreement shall be true and correct in all respects as of the date of this Agreement and as of the Closing as though made as of such time, except to the extent such representations and warranties expressly relate to an earlier time (in which case, such representations and warranties shall be true and correct in all respects as of such earlier time) and (ii) the representations and warranties of Purchaser made in Article IV of this Agreement (other than those listed in the preceding clause (i)) shall be true and correct as of the date of this Agreement and as of the Closing as though made as of such time, (except to the extent such representations and warranties expressly relate to an earlier time, in which case, such representations and warranties shall be true and correct as of such earlier time), except for such failure to be so true and correct that has not had or would not be reasonably likely to, individually or in the aggregate, result in a Purchaser Material Adverse Effect (without giving effect to any “materiality” or “Purchaser Material Adverse Effect” or similar qualifications or limitations set forth therein). Purchaser shall have performed or complied in all material respects with each obligation, agreement and covenant required by this Agreement to be performed or complied with by Purchaser by the time of the Closing. Purchaser shall have delivered to Seller a certificate dated the Closing Date and signed by an authorized officer of Purchaser confirming the foregoing provisions of this Section 8.02(a) (the “Purchaser Officer Certificate”).

(b) No Injunctions or Restraints. No Law or Injunction enjoining or otherwise prohibiting the consummation of the Acquisition shall be in effect.

(c) Governmental Approvals. The waiting period (and any extension thereof) applicable to the consummation of the Acquisition under the HSR Act shall have expired or been terminated and the required approvals and waiting periods under the other applicable Antitrust Laws set forth on Section 8.01(c) of the Seller Disclosure Schedule shall have been received, expired, or been terminated.

(d) Other Closing Deliverables. Purchaser shall have executed and delivered to Seller and the Company the items and documents set forth in Section 2.01(c).

ARTICLE IX

Termination

SECTION 9.01. Termination. This Agreement may be terminated and the Acquisition and other transactions contemplated by this Agreement abandoned at any time prior to the Closing by:

(a) the mutual written consent of Seller and Purchaser;

(b) Seller, upon written notice to Purchaser, if there shall have been a breach by Purchaser of any of the representations, warranties, covenants or obligations contained herein, which breach would reasonably be expected to result in the failure to satisfy any condition set forth in Section 8.02, and any such breach shall be incapable of being cured or, if capable of being cured, shall not have been cured within the earlier of (i) fifteen (15) days after written notice thereof shall have been received by Purchaser and (ii) the Termination Date or the Extended Termination Date, as the case may be;

(c) Purchaser, upon written notice to Seller, if there shall have been a breach by Seller or the Company of any of the representations, warranties, covenants or obligations contained herein, which breach would reasonably be expected to result in the failure to satisfy any condition set forth in Section 8.01, and any such breach shall be incapable of being cured or, if capable of being cured, shall not have been cured within the earlier of (i) fifteen (15) days after written notice thereof shall have been received by Seller and (ii) the Termination Date or the Extended Termination Date, as the case may be;

(d) Seller or Purchaser, upon written notice to the other party, if the Closing has not occurred within ninety (90) days following the date of this Agreement or such later date, if any, that Seller and Purchaser may agree in writing (such date, the “Termination Date”); *provided, however*, that if the conditions set forth in Section 8.01(b) (solely if the Law or Injunction arises under an Antitrust Law), Section 8.01(c), Section 8.02(b) (solely if the Law or Injunction arises under an Antitrust Law), or Section 8.02(c) have not been satisfied as of the Termination Date, then the Termination Date shall automatically extend to the date that is one hundred eighty (180) days following the date of such extension or such later date, if any, that Seller and Purchaser may agree in writing (such date, the “Extended Termination Date”); *provided, further*, the right to terminate this Agreement under this Section 9.01(d) shall not be available to any party whose breach of any covenant or agreement hereunder will have been the principal cause of, or will have directly resulted in, the failure of the Closing to occur on or before the Termination Date or the Extended Termination Date, as the case may be; or

(e) Seller or Purchaser, upon written notice to the other party, if any Law or Injunction enjoining or otherwise prohibiting the Acquisition shall become binding, final and non-appealable;

provided, however, that the party seeking termination pursuant to clause (b), (c), (d) or (e) shall not be entitled to terminate this Agreement if, at the time of such purported termination, it is in breach in any material respect of any of its representations, warranties, covenants or other agreements contained in this Agreement that has caused a condition set forth in Article VIII not to be satisfied.

SECTION 9.02. Termination Fees. In the event that (i) this Agreement is terminated by Seller or Purchaser pursuant to Section 9.01(d) and at the time of such termination the conditions set forth in Section 8.01(c) and/or Section 8.02(c) are not then satisfied and all other conditions to consummate the Closing set forth in Article VIII have been satisfied or waived (and, in the case of those conditions that by their terms are to be satisfied at the Closing, such conditions would be satisfied or are capable of being satisfied if the Closing were to occur at the time of such termination) or (ii) this Agreement is terminated by Seller or Purchaser pursuant to Section 9.01(e) (solely if the Law or Injunction arises under an Antitrust Law) and at the time of such termination all other conditions to consummate the Closing set forth in Article VIII have been satisfied or waived (and, in the case of those conditions that by their terms are to be satisfied at the Closing, such conditions would be satisfied or are capable of being satisfied if the Closing were to occur at the time of such termination), then Purchaser shall, within five (5) Business Days following such termination, pay to Seller, by wire transfer to an account designated by Seller, a termination fee equal to Fifteen Million Dollars (\$15,000,000) (the “Termination Fee”).

SECTION 9.03. Consequences of Termination. In the event of termination by Seller or Purchaser pursuant to this Article IX, written notice thereof shall promptly be given to the other party and the Acquisition and other transactions contemplated by this Agreement shall be terminated, without further action by either party. If this Agreement is terminated and the Acquisition and other transactions contemplated by this Agreement are abandoned as provided in this Article IX, this Agreement shall become void and of no further force or effect, except for the provisions of (i) Section 6.01 (Confidentiality), (ii) Section 7.01 (Publicity), (iv) this Article IX, and (v) Article XI; *provided, however*, that upon the payment by Purchaser of the Termination Fee, Purchaser shall not have any further liability or obligation relating to our arising out of this Agreement or the transactions contemplated by this Agreement except as expressly provided in this Section 9.03 and the Termination Fee shall be the sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise (whether for damages or equitable relief) of Seller and its Affiliates (including the Company and any other person) against Purchaser and its Affiliates for any Losses suffered hereunder, under the Other Transaction Documents or otherwise in connection with the transactions contemplated hereunder or thereunder. Except as set forth in the immediately preceding sentence, nothing in this Article IX shall be deemed to release either Seller or Purchaser from any Liability for any breach by such party of the terms and provisions of this Agreement prior to such termination.

ARTICLE X

Indemnification

SECTION 10.01. Indemnification by Seller.

(a) From and after the Closing, Seller shall indemnify Purchaser and its Affiliates (including the Company) and each of their respective officers, directors, employees, members, managers, general or limited partners, successors, assigns, Affiliates, agents and other Representatives (collectively, the “Purchaser Indemnitees”) against, and pay and hold them harmless from, any Loss suffered or incurred by any such Purchaser Indemnitee, directly or indirectly, as a result of, relating to, or arising from:

(i) any breach or inaccuracy of any representation or warranty of (x) Seller or the Company contained in this Agreement or the Seller Officer Certificates or (y) Seller contained in the Seller Release (the “Seller Release Representations”);

(ii) any breach or failure (i) by Seller or the Company to comply with, perform or discharge any obligation, agreement or covenant contained in this Agreement or the Asset Transfer Agreement to be performed prior to the Closing or (ii) by Seller to comply with, perform or discharge any obligation, agreement or covenant contained in this Agreement, the Asset Transfer Agreement or the Seller Release to be performed following to the Closing;

- (iii) fraud or intentional misrepresentation by the Company (with respect to fraud or intentional misrepresentation prior to the Closing) or Seller;
- (iv) any Excluded Liability; and
- (v) any Pre-Closing Taxes;

provided, that for purposes of determining whether there has been a breach or inaccuracy of any representation or warranty, or the amount of any Loss related to any such breach or inaccuracy, under Section 10.01(a)(i), the representations and warranties set forth in this Agreement and in the Seller Officer Certificates furnished pursuant to this Agreement shall be considered without giving effect to any materiality limitation or qualification (including the terms “material” or “Company Material Adverse Effect”).

(b) Notwithstanding the foregoing or anything to the contrary in this Agreement, Seller shall not be required to indemnify any Purchaser Indemnitee and Seller shall not have any liability:

(i) under Section 10.01(a)(i), unless the aggregate of all Losses for which Seller would be liable, but for this Section 10.01(b)(i), exceeds on a cumulative basis an amount equal to \$2,000,000, and then Seller shall be required, subject to the limitations in Section 10.01(b)(ii), to indemnify the Purchaser Indemnitees for all such Losses (including the first \$2,000,000 of such Losses); provided, however, that no individual claim by the Purchaser Indemnitees shall be asserted under Section 10.01(a)(i) unless and until the aggregate amount of Losses that would be payable pursuant to such claim (or series of related claims or claims related to similar facts or circumstances) exceeds an amount equal to \$25,000; provided, further that the limitations in this Section 10.01(b)(i) shall not apply to any claim for indemnification to the extent arising out of a breach of any Seller Fundamental Representation or any Seller Release Representation; and

(ii) (A) under Section 10.01(a)(i) in excess of the Escrow Amount; provided, however, that this clause (A) shall not apply to any claim for indemnification to the extent arising out of a breach of any Seller Fundamental Representations or any Seller Release Representation, and (B) under Section 10.01(a) in excess of 100% of the Final Purchase Price.

(c) Subject to the limitations set forth in Section 10.01(b), (i) with the exception of any claim for indemnification arising out of a breach of any Seller Fundamental Representation or any Seller Release Representation, recourse by the Purchaser Indemnitees to the Escrow Fund shall be Purchaser Indemnitees’ sole and exclusive remedy for monetary Losses resulting from the matters referred to in Section 10.01(a)(i), and (ii) any payments which may be required by Seller in respect of the amount of such Losses shall be satisfied first from the Escrow Fund out of the then remaining Escrow Amount, and then (to the extent such claims are not limited to the Escrow Amount) by wire transfer from Seller pursuant to Section 10.03(d).

(d) In no event shall Seller be obligated to indemnify any Purchaser Indemnitee with respect to any Loss to the extent that such Loss was expressly taken into account in the calculation of the Closing Purchase Price Elements or Final Purchase Price Elements pursuant to Section 2.02.

(e) Seller shall not be liable (i) for any Taxes of the Company or the Business incurred after the Closing to the extent attributable to actions taken by Purchaser or the Company outside of the ordinary course of business on the Closing Date after the Closing or (ii) except with respect to a breach of the representations and warranties contained in Section 3.05(h), with respect to the amount, value or condition of, or any limitations on, any Tax asset or attribute of the Company (e.g. , tax credits), including the ability of Purchaser or any of its Affiliates (including the Company) to utilize such Tax assets or Tax attributes after the Closing, unless such Tax asset was reflected as an asset in the calculation of the Closing Working Capital pursuant to Section 2.02.

SECTION 10.02. Indemnification by Purchaser.

(a) From and after the Closing, Purchaser shall indemnify Seller and its Affiliates (excluding, for the avoidance of doubt, the Company) and each of their respective officers, directors, employees, members, managers, general or limited partners, successors and assigns of Seller and its Affiliates, agents and other Representatives (collectively, the “Seller Indemnitees”) against, and pay and hold them harmless from, any Loss suffered or incurred by any such Seller Indemnitee, directly or indirectly, as a result of, related to arising from:

(i) any breach or inaccuracy of any representation or warranty of Purchaser contained in this Agreement or the Purchaser Officer Certificate;

(ii) any breach or failure (i) by Purchaser to comply with, perform or discharge any obligation, agreement or covenant contained in this Agreement or the Asset Transfer Agreement to be performed prior to the Closing or (ii) by Purchaser or the Company to comply with, perform or discharge any obligation, agreement or covenant contained in this Agreement or the Asset Transfer Agreement to be performed following to the Closing; and

(iii) any Assumed Liability arising after the Closing under the Asset Transfer Agreement; *provided*, that nothing in this Section 10.02(a)(iii) shall limit or impair Seller’s indemnification obligations under Section 10.01 with respect to such Assumed Liability or the facts and circumstances giving rise thereto;

provided, that for purposes of determining whether there has been a breach or inaccuracy of any representation or warranty, or the amount of any Loss related to any such breach or inaccuracy, under Section 10.02(a)(i), the representations and warranties set forth in this Agreement and in the Purchaser Officer Certificate furnished pursuant to this Agreement shall be considered without giving effect to any materiality limitation or qualification (including the terms “material” or “Purchaser Material Adverse Effect”).

(b) Notwithstanding the foregoing, Purchaser shall not be required to indemnify any Seller Indemnitee and Purchaser shall not have any liability in excess of 100% of the Final Purchase Price.

SECTION 10.03. Limitations on Liability; Cooperation; Manner of Payment; Additional Escrow Payments and Release.

(a) Purchaser and Seller shall cooperate with each other with respect to resolving any claim or Liability with respect to which either party is obligated to indemnify the other party hereunder, including (i) by using reasonable efforts to resolve any such claim or Liability and (ii) by filing claims, and seeking to recover available amounts, under applicable insurance policies; provided, that that the foregoing shall not be deemed to require any party to commence any Proceeding against any persons with which it has an ongoing business relationship (including, with respect to Purchaser and its Affiliates, any restaurant or corporate client with which it has an ongoing business relationship).

(b) Each of Purchaser and Seller shall, to the extent required by applicable Law, act in a commercially reasonable manner to mitigate any Losses they may pay, incur, suffer or sustain for which indemnification is available hereunder.

(c) Each of Purchaser and Seller further acknowledges and agrees that, from and after the Closing, its and its Affiliates' sole and exclusive monetary remedy with respect to any and all claims relating to this Agreement, the Acquisition or any other transactions contemplated by this Agreement shall be pursuant to the indemnification provisions set forth in this Article X. In furtherance of the foregoing, each of Purchaser and Seller hereby waives, on behalf of itself and each of its Affiliates, from and after the Closing, to the fullest extent permitted under applicable Law, any and all rights, claims and causes of action for monetary damages it or any of its Affiliates may have against Seller (in the case of Purchaser) or Purchaser (in the case of Seller) or any of their respective Affiliates arising under or based upon this Agreement, the Acquisition or any other transactions contemplated by this Agreement, except pursuant to the indemnification provisions set forth in this Article X. For the avoidance of doubt, nothing in this Section 10.03(c) shall impair the right of either party to compel specific performance by the other party of its obligations under this Agreement.

(d) Except as set forth in Section 10.01(c), any indemnification of the Purchaser Indemnitees or the Seller Indemnitees pursuant to Section 10.01 or Section 10.02, as applicable, shall be effected by wire transfer of immediately available funds from the indemnifying party to an account designated in writing by the indemnified party within five (5) Business Days after the determination of such Loss in accordance with Section 10.06 or Section 10.07, as applicable. With respect to any payment pursuant to this Section 10.03(d) which is to be satisfied from the Escrow Fund (as described in Section 10.01(c) above), Purchaser and Seller shall promptly execute the necessary documents instructing the Escrow Agent to make the applicable payments. On the Business Day immediately following the Release Date, the balance of the Escrow Fund, *less* the aggregate amount, if any, which any Purchaser Indemnitees has claimed under this Section 10.03(d) prior to such date (to the extent of Losses subject to such claims, if any, remain unresolved and in the case of Specified Pre-Closing Taxes only to the extent (i) such claims are the subject of any audit, investigation, assessment, or proposed deficiency by a Taxing Authority or (ii) Purchaser or its applicable Affiliates would be permitted to take any actions contemplated by Section 7.04(e)(iv) or Section 7.04(e)(v) with respect to such claims) (such difference, the “Unclaimed Remaining Escrow Amount”) shall be distributed, and Purchaser and Seller shall promptly execute the necessary documents instructing the Escrow Agent to make the applicable payment of the Unclaimed Remaining Escrow Amount, by wire transfer of immediately available funds to Seller. Upon final resolution of all such previously unresolved claims in accordance with Section 10.06 and Section 10.07 and after payments related to such claims are made, the balance of the Escrow Fund, if any (the “Final Remaining Escrow Amount”), shall be distributed, and Purchaser and Seller shall promptly execute the necessary documents instructing the Escrow Agent to make the applicable payment of the Final Remaining Escrow Amount, by wire transfer of immediately available funds to Seller.

SECTION 10.04. Calculation of Losses. For the purposes of the indemnification provisions set forth in this Article X, any Losses or amounts otherwise payable hereunder shall be determined on the basis of the net effect after giving effect to any cash payments, setoffs, recoupment or other payments, in each case, actually received, realized or retained by the indemnified party (including any amounts recovered by the indemnified party under insurance policies) as a result of any event giving rise to a claim for such indemnification; provided, however, that the fact that any amounts described in this Section 10.04 may be available to an indemnified party but have not yet been actually received shall not restrict or limit such indemnified party's ability to recover any Losses pursuant to this Article X (subject to the indemnified party's obligation to reimburse any portion of indemnified Losses for which insurance recovery has actually been received so as to ensure no double recovery).

SECTION 10.05. Termination of Indemnification.

(a) The obligations to indemnify and hold harmless a party hereto pursuant to (i) Sections 10.01(a)(i) and 10.02(a)(i), as each relates to breaches of representations and warranties, shall terminate when the applicable representation or warranty terminates pursuant to Section 10.05(b), (ii) Section 10.01(a)(ii) and Section 10.02(a)(ii), shall terminate at the close of business on the seventh (7th) anniversary of the Closing Date; provided, that with respect to covenants requiring performance after Closing which extend beyond the seventh (7th) anniversary of the Closing, such covenants shall terminate in accordance with their respective terms, (iii) Section 10.01(a)(iii) shall terminate at the close of business on the tenth (10th) anniversary of the Closing Date and (iv) Section 10.01(a)(v) shall terminate at the close of business on the seventh (7th) anniversary of the Closing Date; provided, that, as to the foregoing clauses (i) through (iv) of this sentence, such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which the person to be indemnified or a related party thereto, or any person on behalf of such indemnified person or related party, shall have, before the expiration of the applicable period, previously made a claim by delivering a notice of such claim (stating in reasonable detail the basis of such claim) to the indemnifying party.

(b) The representations and warranties contained in this Agreement shall survive the Closing solely for purposes of Sections 10.01 and 10.02 and shall terminate at the close of business on the eighteen (18) month anniversary of the Closing Date (the "Release Date"); provided, that the Seller Fundamental Representations and the Seller Release Representations shall terminate on the seventh (7th) anniversary of the Closing Date.

SECTION 10.06. Procedures Relating to Indemnification for Third Party Claims.

(a) In order for a person (the “indemnified party”) to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a claim or demand made by any person that is not party, or an Affiliate of a party, to this Agreement against such indemnified party (a “Third Party Claim”), such indemnified party must notify the party responsible for such indemnification under this Agreement (the “indemnifying party”) of the Third Party Claim in writing, and in reasonable detail, within twenty (20) Business Days after receipt by such indemnified party of written notice of the Third Party Claim, which notice shall refer to the provision of this Agreement upon which such claim is based, and describe in reasonable detail (to the extent known) the facts giving rise to such claim and the amount of Losses asserted against the indemnifying party relating to such claim; provided, that failure to give such notification shall not affect the indemnification provided hereunder except and only to the extent the indemnifying party shall have been actually prejudiced as a result of such failure. Thereafter, such indemnified party shall deliver to the indemnifying party, promptly after such indemnified party’s receipt thereof, copies of all notices and documents (including court papers) received by such indemnified party relating to the Third Party Claim.

(b) If a Third Party Claim is made against any indemnified party, the indemnifying party shall be entitled to participate in the defense thereof at its sole cost and expense and, if it so chooses, to assume the defense thereof with counsel selected by the indemnifying party; provided, that such counsel is not reasonably objected to by such indemnified party. Should the indemnifying party so elect to assume the defense of a Third Party Claim, the indemnifying party shall not be liable to any indemnified party for legal expenses subsequently incurred by such indemnified party in connection with the defense thereof. If the indemnifying party assumes such defense, each indemnified party shall have the right to participate in the defense thereof and to employ counsel (not to be unreasonably objected to by the indemnifying party), at its own expense, separate from the counsel employed by the indemnifying party, it being understood that the indemnifying party shall control such defense. The indemnifying party shall be liable for the reasonable fees and expenses of counsel employed by any indemnified party for any period during which the indemnifying party has not assumed the defense of a Third Party Claim.

(c) If the indemnifying party so elects to defend or prosecute any Third Party Claim, all of the indemnified parties shall cooperate with the indemnifying party in the defense or prosecution thereof. Such cooperation shall include the retention and (upon the indemnifying party’s request) the provision to the indemnifying party of Records and information that are reasonably relevant to such Third Party Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. If the indemnifying party assumes the defense of a Third Party Claim, the indemnifying party shall keep the indemnified party reasonably informed (including by timely providing copies of all written correspondence) regarding the status of any Third Party Claim and may not consent to any settlement, compromise or discharge of a Third Party Claim without the prior written consent of the indemnified party (which consent will not be unreasonably withheld or delayed), unless such settlement obligates the indemnifying party to pay the full amount of the Liability in connection with such Third Party Claim and releases such indemnified party completely in connection with such Third Party Claim.

(d) Notwithstanding the foregoing provisions of this Section 10.06, the indemnifying party shall not be entitled to assume the defense of any Third Party Claim (and shall be liable for the reasonable fees and expenses of counsel incurred by any indemnified party in defending such Third Party Claim), if (i) such indemnifying party has not acknowledged in writing its obligation to indemnify the indemnified party in accordance with this Article X against any Losses that may result from such Third Party Claim, (ii) a reasonable likelihood exists of a conflict of interest relating to the indemnifying party that makes representation by the indemnifying party's counsel inappropriate, (iii) such Third Party Claim seeks an order, injunction or other equitable relief or relief for other than money damages against such indemnified party or (iv) such Third Party Claim alleges criminal conduct or involves criminal penalties with respect to such indemnified party or its Affiliates.

(e) Whether or not the indemnifying party shall have assumed the defense of a Third Party Claim, no indemnified party shall admit any liability with respect to, or settle, compromise or discharge, such Third Party Claim without the indemnifying party's prior written consent (which consent shall not be unreasonably withheld or delayed); provided, that such indemnified party shall not consent, and the indemnifying party shall not be required to agree, to the entry into any settlement, compromise or discharge that (i) requires an admission of wrongdoing by the indemnifying party or (ii) provides for injunctive or other non-monetary relief affecting the indemnifying party in any way.

SECTION 10.07. Procedures Related to Indemnification for Other Claims. In the event any indemnified party should have a claim against any indemnifying party under Section 10.01 or 10.02 that does not involve a Third Party Claim being asserted against or sought to be collected from such indemnified party, the indemnified party shall deliver notice of such claim to the indemnifying party promptly after obtaining knowledge of such claim, which notice shall refer to the provision of this Agreement upon which such claim is based, and describe in reasonable detail (to the extent known) the facts giving rise to such claim and the amount of Losses asserted against the indemnifying party relating to such claim. The failure by such indemnified party so to notify such indemnifying party shall not relieve such indemnifying party from any Liability which it may have to such indemnified party under Section 10.01 or 10.02, except and only to the extent that such indemnifying party shall have been actually prejudiced as a result of such failure. If such indemnifying party disputes its Liability with respect to such claim, such indemnifying party and such indemnified party shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be resolved by litigation in an appropriate court of competent jurisdiction as set forth in Section 11.11.

SECTION 10.08. Tax Treatment of Indemnity Payments. For all Tax purposes, each of Purchaser, Seller and their respective Affiliates agrees to treat any indemnity payment under this Agreement as an adjustment to the Purchase Price received by Seller for the transactions contemplated by this Agreement, unless otherwise required by applicable Law.

ARTICLE XI

Miscellaneous

SECTION 11.01. Assignment. This Agreement and the rights and obligations hereunder shall not be assignable or transferable by any party hereto (including by operation of Law in connection with a merger, consolidation or sale of all or substantially all of the assets of any party hereto) without the prior written consent of the other party hereto; provided, that, (i) if the Closing occurs, (A) Purchaser may, at its election, assign any or all of its rights, but not its obligations, hereunder to any lender to Purchaser or its Affiliates and (B) Purchaser may assign its rights under this Agreement in connection with any sale or transfer of equity securities of, or any merger, consolidation, change of control or other business combination involving, Purchaser or the Company, and (ii) Purchaser may, at its election, assign its rights under this Agreement to any direct or indirect Affiliate of Purchaser, but no such assignment of this Agreement pursuant to clause (i) or (ii) of this Section 11.01 shall relieve the assigning party of any of its obligations under this Agreement. Any attempted assignment in violation of this Section 11.01 shall be void.

SECTION 11.02. No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person, other than the parties hereto and such assigns, any legal or equitable rights hereunder, it being understood that the foregoing shall not limit the right of a Purchaser Indemnitee or Seller Indemnitee to bring claims for indemnification following the Closing under Article X in accordance with its terms.

SECTION 11.03. Expenses and Fees. Except as otherwise specifically provided in this Agreement (including in Section 7.02(d), Section 7.04(c) and Section 10.06), all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid, in the case of Seller, by Seller (if the transactions contemplated by this Agreement are not consummated), or will be treated as Selling Expenses (if the transactions contemplated by this Agreement are consummated), and in the case of Purchaser, by Purchaser. For the avoidance of doubt, Seller shall bear all costs and expenses incurred by the Company in connection with the negotiation, preparation and execution of this Agreement and the consummation of the Acquisition and the other transactions contemplated hereby.

SECTION 11.04. Amendments. This Agreement may not be amended, except by an instrument in writing signed on behalf of each of the parties hereto. By an instrument in writing, Purchaser, on the one hand, or Seller, on the other hand, may waive compliance by the other party with any term or provision of this Agreement that such other party was or is obligated to comply with or perform. Any such waiver shall only be effective in the specific instance and for the specific and limited purpose for which it was given and shall not be deemed a waiver of any other provision of this Agreement or of the same breach or default upon any recurrence thereof. No failure on the part of any party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

SECTION 11.05. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand; sent by email; sent by facsimile (with confirmation of receipt); or sent, postage prepaid, by registered, certified or express mail or reputable overnight courier service and shall be deemed given, if delivered by hand, when so delivered; if emailed, when delivered (confirmation of delivery not to be withheld); if by facsimile, when receipt is so confirmed; or, if mailed, three (3) days after mailing (or one (1) Business Day in the case of overnight mail or overnight courier service), as follows (or at such other address for a party as shall be specified by like notice):

(a) if to Purchaser or Parent,

Grubhub Holdings, Inc.
c/o Grubhub Inc.
1065 Sixth Avenue, 15th Floor
New York, NY 10018
Attention: Maggie Drucker, SVP and General Counsel
Facsimile: (877) 925-7174
Email:

and

Kirkland & Ellis LLP
600 Lexington Avenue
New York, NY 10022
Attention: Daniel E. Wolf, P.C.
Laura Sullivan
Facsimile: (212) 446-6460
Email:

(b) if to Seller,

Yelp Inc.
140 New Montgomery Street, 9th Floor
San Francisco, CA 94105
Attention: Laurence Wilson, General Counsel
Facsimile: (415) 908-3833
Email:

with a copy to:

Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025
Attention: Mark W. Seneca
Facsimile: (650) 614-7401
Email:

SECTION 11.06. Interpretation; Exhibits and Seller Disclosure Schedule; Certain Definitions.

(a) The definitions of the terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. The word “or” shall be construed to have the same meaning and effect as the inclusive term “and/or”. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply “if”. The phrase “date hereof” or “date of this Agreement” shall be deemed to refer to August 3, 2017. All terms defined in this Agreement shall have their defined meanings when used in the Seller Disclosure Schedule, any Exhibit or any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein), (ii) the words “herein”, “hereto”, “hereby”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iii) all references herein to Articles, Sections or Exhibits shall be construed to refer to Articles, Sections or Exhibits of this Agreement, (iv) the headings contained in this Agreement, the Seller Disclosure Schedule, any Exhibit and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement, the Seller Disclosure Schedule or any Exhibit and (v) the phrase “in the ordinary course of business” shall be deemed to be followed by the phrase “consistent with past practice”. The Seller Disclosure Schedule and all Exhibits are hereby incorporated in and made a part of this Agreement as if set forth in full herein. The parties hereto acknowledge that each party and its counsel have reviewed and revised this Agreement and that this Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(b) For all purposes hereof:

“\$” means lawful money of the United States of America.

“Accounting Policies” means GAAP, and to the extent consistent with GAAP, the accounting principles, procedures, practices, methodologies, and policies used by Seller to prepare the Financial Statements.

“Affiliate” means, with respect to any specified person, any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, “control” when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing. For the avoidance of doubt, except as otherwise noted, (i) prior to the Closing, the Company shall be an Affiliate of Seller and (ii) following the Closing, the Company shall be an Affiliate of Purchaser.

“ Antitrust Law ” means any multinational, federal, state, provincial and foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines and other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

“ Assumed Liability ” has the meaning ascribed to it in the Asset Transfer Agreement.

“ Benefit Plan ” means any “employee pension benefit plan” (as defined in Section 3(2) of ERISA), any “employee welfare benefit plan” (as defined in Section 3(1) of ERISA) and any other plan, policy, program or arrangement providing for employment, severance or retention benefits, profit-sharing, bonuses, stock options, stock appreciation, stock purchase or other stock-related rights, incentive or deferred compensation, change-in-control benefits, paid time off benefits, health or medical benefits, dental benefits, employee assistance programs, disability benefits, post-employment or retirement benefits that is sponsored, maintained or contributed to, or required to be contributed to, by Seller or any of its Affiliates for the benefit of any Business Employee or under which Seller or any of its Affiliates has any liability for premiums or benefits or compensation for any Business Employee.

“ Business ” means, the online and mobile food ordering service business, activities and operations conducted (x) by Seller and the Company as of the date of this Agreement and (y) by the Company as of immediately prior to the Closing (after giving effect to the Asset Transfer).

“ Business Day ” means any day, other than a Saturday or Sunday, on which commercial banks are not required or authorized to close in New York City.

“ Business Employee ” means any employee who is employed by Seller, the Company or any of their respective Affiliates (regardless of whether such employee is inactive due to illness, disability, workers’ compensation or other approved leaves of absence) whose services are primarily related to the Business.

“ Cash ” means the aggregate amount of cash and cash equivalents held by the Company (including the amount of any received but uncleared checks, drafts and wires issued prior to the Effective Time) net of outstanding checks and determined in accordance with the Accounting Policies.

“ Closing Date Financing Deliverables ” means (i) evidence of the release of related Liens, including the related filings and the return of possessory collateral upon the payment thereof, as well as evidence of delivery of any required notice of such repayment, and (ii) such documentation and other information regarding Seller and/or the Company as is required under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, that has been requested in writing at least five (5) Business Days prior to the Closing Date, which documentation and other information shall be delivered at least four (4) Business Days prior to the Closing, in each case, in form and substance reasonably acceptable to Purchaser.

“Closing Date Indebtedness Estimate” means an estimate, prepared by Seller and delivered to Purchaser at least four (4) Business Days prior to the Closing Date, of the Closing Indebtedness.

“Closing Date Downward Working Capital Adjustment” means (i) the Target Working Capital minus the Closing Date Working Capital Estimate, if the Closing Date Working Capital Estimate is less than the Target Working Capital, and (ii) \$0, if the Closing Date Working Capital Estimate is greater than or equal to the Target Working Capital.

“Closing Date Upward Working Capital Adjustment” means (i) the Closing Date Working Capital Estimate minus the Target Working Capital, if the Closing Date Working Capital Estimate is greater than the Target Working Capital, and (ii) \$0, if the Closing Date Working Capital Estimate is less than or equal to the Target Working Capital.

“Closing Date Purchase Price” means, without duplication, (i) the Purchase Price plus (ii) the Closing Date Upward Working Capital Adjustment minus (iii) the Closing Date Downward Working Capital Adjustment minus (iv) the Closing Date Indebtedness Estimate minus (v) the Closing Date Selling Expenses Estimate.

“Closing Date Selling Expenses Estimate” means an estimate, prepared by Seller and delivered to Purchaser at least four (4) Business Days prior to the Closing Date, of the Closing Selling Expenses.

“Closing Date Working Capital Estimate” means an estimate, prepared by Seller and delivered to Purchaser at least four (4) Business Days prior to the Closing Date, of the Closing Working Capital.

“Closing Indebtedness” means the Indebtedness of the Company that remains outstanding and unpaid as of immediately prior to the Closing.

“Closing Selling Expenses” means the Selling Expenses that remain outstanding and unpaid as of immediately prior to the Closing.

“Closing Working Capital” means Current Assets minus Current Liabilities as of the Effective Time.

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Company IP Agreements” means all Contracts to which the Company is a party (i) pursuant to which the Company licensed or transferred any Intellectual Property to any third party or by which the Company covenanted not to sue or otherwise granted any other right to a third party with respect to, or restricted its right to enforce or use, any Intellectual Property or (ii) pursuant to which a third party licensed or transferred any Intellectual Property to the Company or covenanted not to sue or granted the Company any other right with respect to any Intellectual Property, or (iii) related to the development, acquisition, or escrow of any Intellectual Property.

“Company Material Adverse Effect” means any change, effect, event, development, circumstance or occurrence that, individually or in the aggregate with all other changes, effects, events, developments, circumstances or occurrences, (i) has had, or would reasonably be expected to have, a material adverse effect on the assets, business, rights, Liabilities, properties, condition (financial or otherwise) or results of operations of the Company and/or the Business, taken as a whole, or (ii) prevents or materially delays or impairs, or would reasonably be expected to prevent or materially delay or impair, the consummation of the Acquisition or the other transactions contemplated by this Agreement by Seller or the Company or the performance of Seller’s, the Company’s or their respective Affiliates’ obligations under this Agreement and the Other Transaction Documents, in each case in a timely manner; provided, that for purposes of clause (i) above, “Company Material Adverse Effect” shall exclude any such change, effect, event, development, circumstance or occurrence to the extent resulting from (A) changes, effects, events, developments, circumstances or occurrences in the credit, financial or capital markets or the economy in general, including changes in interest or exchange rates, (B) changes, effects, events, developments, circumstances or occurrences in regulatory, legislative or political conditions, (C) changes, effects, events, states of facts, circumstances, developments or occurrences in applicable Law or applicable accounting regulations or principles that Seller and the Company are required to adopt or enforcement of any of the foregoing, (D) changes, effects, events, developments, circumstances or occurrences in general in any of the industries or geographic areas in which the Company or the Business operates, (E) the execution, delivery and announcement of the transactions contemplated by this Agreement or any Other Transaction Document, and the consummation of the transactions contemplated hereby and thereby; provided, that the exceptions in this clause (E) shall not apply to any representation or warranty contained in this Agreement to the extent it expressly purports to address the consequences resulting from the execution or announcement of this Agreement and the Other Transaction Documents, the performance of obligations or satisfaction of conditions under this Agreement or the consummation of the transactions contemplated hereby and thereby, (F) any acts or threats of terrorism, sabotage, military action or war (whether or not declared) or any escalation or worsening of the foregoing, any hurricane, flood, tornado, earthquake, pandemics or natural disaster, or any other force majeure event, whether or not caused by any person, or any national or international calamity or crisis, (G) the failure of the Company or the Business to meet any internal or external projections, estimates, budgets, predictions, plans, milestones or forecasts (it being understood that the underlying facts giving rise or contributing to such change or such failure in this clause (G) may be taken into account in determining whether there has been or would reasonably be expected to be a Company Material Adverse Effect), or (H) actions taken at the prior express written request of Purchaser (provided the Company complies fully and solely within the limits of such request); except, in the cases of clauses (A), (B), (C), (D) and (F), to the extent that the Company and the Business are disproportionately affected thereby as compared to other similarly situated participants in the industries in which the Company operates (in which case the incremental disproportionate impact or impacts may be taken into account in determining whether a Company Material Adverse Effect has occurred or would reasonably be expected to occur).

“Company Owned Intellectual Property” means the Intellectual Property that is owned by the Company, including Intellectual Property owned by the Company that is included in the Transferred Assets.

“Current Assets” means the sum of the total current assets of the Company calculated in accordance with the Accounting Policies, which current assets shall consist of the line items set forth on Section 2.02(e) of the Seller Disclosure Schedule (and, for the avoidance of doubt, shall include Cash as calculated in accordance with the Accounting Policies).

“ Current Liabilities ” means the sum of the total current liabilities of the Company calculated in accordance with the Accounting Policies, which current liabilities shall consist of the line items set forth on Section 2.02(e) of the Seller Disclosure Schedule (and, for the avoidance of doubt, shall exclude Indebtedness of the Company and Selling Expenses).

“ Data Security Requirements ” means, collectively, all of the following to the extent relating to any access, collection, use, processing, storage, sharing, distribution, transfer, disclosure, security, destruction, or disposal of any personal information or data (“ Personal Data ”) (whether in electronic or any other form or medium) or otherwise relating to privacy, security, or security breach notification requirements and applicable to the Company, to the conduct the Business, or to any IT Asset: (i) the Company’s or Seller’s own rules, policies, processes, and procedures (whether physical or technical in nature, or otherwise), (ii) all applicable Laws, and (iii) the Payment Card Industry Data Security Standard (PCI DSS), solely to the extent applicable, and (iv) contracts and agreements into which the Company has entered or by which it, its assets or the Business are otherwise bound.

“ Environmental Law ” means any Law or Injunction issued by or entered into with any Governmental Entity, relating to pollution, protection of the environment, human health and safety, endangered or threatened species or the preservation or restoration of natural resources.

“ Environmental Permits ” means all licenses, certificates, permits, authorizations, franchises, exemptions, variances, consents, orders, clearances, registrations and approvals issued or granted by any Governmental Entity required under, or issued pursuant to, Environmental Laws.

“ ERISA ” means the Employee Retirement Income Security Act of 1974, as amended.

“ Escrow Account ” means the escrow account established under the Escrow Agreement.

“ Escrow Agent ” means Bank of America, National Association.

“ Escrow Agreement ” means that certain Escrow Agreement, dated as of the Closing Date, to be entered into by and among Purchaser, Seller and the Escrow Agent, in substantially the form of Exhibit C attached hereto.

“ Escrow Amount ” means an amount equal to \$28,750,000.

“ Escrow Fund ” means the funds held in the Escrow Account with the Escrow Agent pursuant to Section 2.01(c)(ii) of this Agreement, including any interest or earnings accrued thereon.

“ Excluded Liability ” means (i) Liabilities arising from the failure to timely and properly file the 2014 IRS Form 5500 for the Eat24hours.com Health & Welfare Plan, (ii) Liabilities arising from the Specified Matters, (iii) the Excluded Liabilities as defined in the Asset Transfer Agreement and (iv) the Non-Business Liabilities.

“Final Downward Working Capital Adjustment” means (i) the Target Working Capital minus the Final Working Capital, if the Final Working Capital is less than the Target Working Capital, and (ii) \$0, if the Final Working Capital is greater than or equal to the Target Working Capital.

“Final Indebtedness” means the Closing Indebtedness as finally determined pursuant to Section 2.02.

“Final Selling Expenses” means the Closing Selling Expenses as finally determined pursuant to Section 2.02.

“Final Upward Working Capital Adjustment” means (i) the Final Working Capital minus the Target Working Capital, if the Final Working Capital is greater than the Target Working Capital, and (ii) \$0, if the Final Working Capital is less than or equal to the Target Working Capital.

“Final Purchase Price” means, without duplication, (i) the Purchase Price plus (ii) the Final Upward Working Capital Adjustment minus (iii) the absolute value of the Final Downward Working Capital Adjustment minus (iv) the Final Indebtedness minus (v) the Final Selling Expenses.

“Final Working Capital” means the Closing Working Capital as finally determined pursuant to Section 2.02.

“Former Business Employee” means any former employee of Seller or the Company who, on his or her date of retirement or termination of employment (as applicable), provided services primarily to the Business.

“GAAP” means generally accepted accounting principles in the United States.

“Governing Documents” means, with respect to any person who is not a natural person, the certificate or articles of incorporation, bylaws, deed of trust, formation or governing agreement or other charter documents or organizational or governing documents or instruments of such person, and any and all amendments to any of the foregoing documents.

“Government Official” means (i) any official, officer, employee or representative of, or any person acting in an official capacity for or on behalf of, any Governmental Entity, (ii) any political party or party official or candidate for political office or (iii) any company, business, enterprise or other entity owned, in whole or in part, or controlled by any person described in the foregoing clauses (i) or (ii) of this definition.

“Governmental Entity” means any supranational, federal, state, provincial or local, whether U.S. or non-U.S., government or any court of competent jurisdiction, governmental agency, commission, stock exchange, regulatory body, authority, arbitral panel (public or private) or instrumentality.

“Hazardous Material” means any petroleum or petroleum products; radioactive materials or wastes; asbestos in any form; urea formaldehyde foam insulation; polychlorinated biphenyls; and any other chemical, material, substance or waste that is prohibited, limited or regulated, or for which Liability or standards of conduct may be imposed, under any Environmental Law due to its dangerous or deleterious properties or characteristics.

“ Indebtedness ” means, of any person, without duplication, (i) the outstanding principal amount and accrued and unpaid interest in respect of (A) indebtedness of such person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments the payment of which such person is responsible or liable, including any prepayment premiums, penalties, consent or other fees or breakage costs related to any amounts described in the foregoing clauses (A) and (B); (ii) all obligations of such person issued or assumed as the deferred purchase price of property, any earn out or other payment obligations with respect to any prior acquisition or business combination, all conditional sale obligations of such person and all obligations of such person under any title retention agreement (but excluding ordinary course trade accounts payable and other accrued current liabilities); (iii) all obligations under any interest rate, currency, swap or other hedging arrangement; (iv) all liabilities of such person under or in connection with drawn letters of credit or bankers’ acceptances, performance bonds, sureties or similar obligations; (v) obligations of such person as lessee under leases that have been or are required to be recorded as capital leases in accordance with GAAP; and (vi) all obligations of the types referred to in clauses (i) through (v) of any person the payment of which such person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, in each case, determined in accordance with the Accounting Policies.

“ Injunction ” means any temporary restraining order, preliminary or permanent injunction or other judgment, order, writ, ruling, assessment, award or decree of any Governmental Entity.

“ Intellectual Property ” means all intellectual property and proprietary rights, including all: (i) patents and patent applications, together with all reissues, continuations, continuations-in-part, revisions, divisionals, extensions and reexaminations in connection therewith (“ Patents ”); (ii) trademarks, service marks, brand names, logos, slogans and trade dress or other indicia of origin, together with any applications for registration, registrations and renewals of, and the goodwill associated with, any of the foregoing (collectively, the “ Marks ”); (iii) Internet domain names; (iv) copyrights and copyrightable works of authorship, together with any applications for registration, registrations and renewals of any of the foregoing; and (v) trade secrets and know-how (including inventions, formulae, processes, methods and technology).

“ IT Assets ” means the computers, servers, workstations, routers, hubs, switches, circuits, networks, data communications lines and all other information technology equipment owned or leased by the Company or Seller with respect to the Company or the Business and, in each case, used by Seller or the Company in connection with the Business.

“ knowledge of Purchaser ” means the actual knowledge (after due inquiry) of the persons identified in Section 11.06(b) of the Purchaser Disclosure Schedule.

“ knowledge of Seller ” means the actual knowledge (after due inquiry) of the persons identified in Section 11.06(b) of the Seller Disclosure Schedule.

“Law” means any federal, state, local or foreign law (including any common law), statute, writ, treaty, rule, code, ordinance, regulation, arbitral award or other enforceable requirement or Injunction of a Governmental Entity.

“Liability” or “Liabilities” means liabilities, obligations, debts, deficiencies, interests, Taxes, penalties, fines, claims, demands, judgments, causes of action, commitments, costs or expenses of whatever kind and nature (and whether or not required to be accrued on a balance sheet under GAAP), whether asserted or unasserted, primary or secondary, direct or indirect, absolute or contingent, known or unknown, liquidated or unliquidated, whether or not accrued.

“Loss” or “Losses” means losses, damages, charges, liabilities (but for purposes of this definition of “Loss” liabilities to a third party or Governmental Entity that are accrued for accounting purposes but not yet incurred shall be excluded until incurred; provided, that an indemnified party may submit a claim for such accrued but not yet incurred liability which claim shall be timely submitted for purposes of Section 10.05), obligations, settlement payments, awards, judgments, penalties, fines, Taxes, costs or expenses (including all reasonable and documented out-of-pocket legal fees and expenses), but excluding punitive damages (other than such damages awarded by a court of competent jurisdiction to any third party against an indemnified party).

“Marks” has the meaning set forth in the “Intellectual Property” definition in Section 11.06(b).

“Non-Business Liability” means any Liability or obligation of the Company to the extent (i) not arising out of or relating to the operation of the Business prior to the Closing or (ii) arising out of or related to the Non-Business Assets (as defined in the Asset Transfer Agreement).

“Off-the-Shelf Software Licenses” means licenses in respect of commercially available, unmodified, “off-the-shelf” Software used by the Company solely for its own internal use, for an aggregate fee, royalty or other consideration for any such Software or group of related Software licenses of no more than \$50,000.

“Open Source Software” means Software that is licensed pursuant to (i) any license that is, or is substantially similar to, a license now or in the future approved by the Open Source Initiative and listed at <http://www.opensource.org/licenses> (which licenses shall include all versions of GNU GPL, GNU LGPL, GNU Affero GPL, MIT license, Eclipse Public License, Common Public License, CDDL, Mozilla Public License, BSD license and Apache license) and any “copyleft” license or any other license under which such Software or other materials are distributed or licensed as “free software,” “open source software” or under similar terms.

“Other Transaction Documents” means the Transaction Documents other than this Agreement.

“Permits” means all licenses, certificates, permits, authorizations, registrations, consents, clearances, exemptions and approvals issued or granted by any Governmental Entity.

“ person ” means any individual, firm, corporation, partnership, limited liability company, trust, joint venture, Governmental Entity or other entity, including such person’s successors and assigns.

“ Pre-Closing Taxes ” means (i) any Taxes of Seller and its Affiliates (other than the Company) with respect to any taxable period, (ii) any Taxes for Pre-Closing Tax Periods imposed on or with respect to the Company (excluding Transfer Taxes, which shall be addressed pursuant to Section 7.04(c)), (iii) any Taxes of any member of an consolidated, combined, affiliated, unitary or other group for Tax purposes of which Seller or the Company is or was a member prior to the Closing, including pursuant to Treasury Regulations Section 1.1502-6 (or any similar provision of federal, state or local, whether U.S. or non-U.S. Law), (iv) any Taxes of another person for which the Company is liable by contract, or otherwise, which Taxes relate to an event or transaction occurring before the Closing and (v) any Taxes attributable to the Asset Transfer (excluding Transfer Taxes, which shall be addressed pursuant to Section 7.04(c)).

“ Pre-Closing Tax Period ” means any taxable period (and the portion of any Straddle Period) ending on (and including) or before the Closing Date.

“ Purchase Price ” means \$287,500,000.

“ Purchaser Material Adverse Effect ” means any change, effect, event or occurrence that has a material adverse effect on the ability of Purchaser to (a) consummate the Acquisition or the other transactions contemplated by this Agreement or (b) perform its obligations under this Agreement and the Other Transaction Documents, in each case, in a timely manner.

“ Records ” means all books, records and documents, including books of account; ledgers; general, financial and accounting records; files; invoices; lists of restaurants, corporate clients and suppliers; other distribution lists; billing records; sales and promotional literature; manuals; and correspondence; in each case, in any form or medium

“ Release ” means any release, spill, emission, leaking, dumping, injection, pumping, emptying, escaping, pouring, deposit, disposal, discharge, dispersal or leaching or migration into or through the environment (including ambient or indoor air, surface water, groundwater, land surface or subsurface strata).

“ Representatives ” means, with respect to any specified person, such person’s officers, directors, employees, agents, counsel, auditors, financial and other advisors and other representatives.

“ Seller Companies ” means, collectively, Seller and its subsidiaries (other than the Company), and each, a “Seller Company”.

“ Seller Disclosure Schedule ” means Seller’s disclosure schedule attached hereto.

“ Seller Names and Marks ” means (i) the name of each of Seller and its Affiliates as of the Closing Date that contains “Yelp”; (ii) any Marks owned by Seller and its Affiliates (other than the Company) that are similar to, or are otherwise variations or derivatives of, any of the foregoing (including any translations, abbreviations, adaptations and combinations thereof); and (iii) any applications for registration, registrations and renewals of, and social media handles associated with, any of the foregoing, together with all goodwill associated with the foregoing Marks.

“Seller Release” means the release, in the form attached hereto as Exhibit E.

“Seller Tax Group” means any consolidated, combined, affiliated, unitary or similar Tax group of which Seller or any of its Affiliates (other than the Company) is the common parent.

“Selling Expenses” means, to the extent unpaid by the Seller Companies (including, for the avoidance of doubt, the Company) as of the Closing Date, (i) all of the fees, costs and expenses payable by the Seller Companies to legal counsel, accountants, advisors, brokers and other third parties (including Orrick, Herrington & Sutcliffe LLP) or any direct or indirect equityholder whether accrued for or not, in connection with the negotiation of the Transaction Documents and the consummation of the transactions contemplated by this Agreement and the Other Transaction Documents, (ii) compensatory, sale, transaction, change of control, retention or similar bonuses or severance (excluding, for the avoidance of doubt, any severance payment that is an Assumed Liability (as defined in the Asset Transfer Agreement)) or similar payments that become payable to any employee of Seller or the Company as a result of the transactions contemplated by this Agreement or the Other Transaction Documents (including together with any employer-paid portion of any employment and payroll taxes related thereto) and (iii) any Taxes (other than Transfer Taxes) incurred by the Company directly attributable to the Acquisition (including as a result of items described in clauses (i) and (ii)).

“Software” means software (including source code, executable code, data, databases and documentation pertaining thereto).

“Specified Pre-Closing Taxes” means any Liabilities with respect to sales and use Taxes and Tax Returns with respect thereto, liabilities with respect to any failure to file IRS Forms 1099 and collect withholdings (including backup withholding) with respect to transactions related to the IRS Forms 1099, and any penalties and interest related thereto.

“Straddle Period” means any taxable period that includes (but does not end on) the Closing Date.

“subsidiary” of any person means another person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, fifty percent (50%) or more of the equity interests of which) is owned directly or indirectly by such first person or by another subsidiary of such person. For the avoidance of doubt, except as otherwise noted, (i) prior to the Closing, the Company shall be a subsidiary of Seller and (ii) following the Closing, the Company shall be a subsidiary of Purchaser.

“Target Working Capital” means negative \$15,500,000.

“Tax Return” means all returns, declarations, reports, elections, claims for refund, information return, forms or similar statements required to be filed with any Taxing Authority (including any schedules or attachments thereto and amendments thereof).

“ Taxes ” means (i) all federal, state, provincial and local, whether U.S. or non-U.S., income, gross receipts, branch profits, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, escheat, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, ad valorem, value added, alternative or add-on minimum or estimated tax or other tax, assessment, charge, duty, fine, levy and other governmental charge of any kind whatsoever, to the extent the foregoing are in the nature of a tax, including all interest, penalties and additional amounts imposed with respect thereto or in lieu thereof, (ii) any liability for or in respect of the payment of any amount of a type described in clause (i) of this definition as a result of being a member of an consolidated, combined, affiliated, unitary or other group for Tax purposes, and (iii) any liability for or in respect of the payment of any amount described in clauses (i) or (ii) of this definition as a transferee or successor, by contract, or otherwise.

“ Taxing Authority ” means any Governmental Entity responsible for the imposition of any Tax or having or purporting to exercise jurisdiction with respect to any Tax.

“ Transaction Documents ” means (i) this Agreement, (ii) the Asset Transfer Agreement, (iii) the Transition Services Agreement, (iv) the Marketing Partnership Agreement, (v) the Escrow Agreement and (vi) the Seller Release.

“ Transfer Taxes ” means all transfer, documentary, sales, use, registration, value-added and other similar Taxes (including all applicable real estate transfer Taxes) incurred in connection with the Acquisition or the Asset Transfer.

“ Transferred Assets ” shall have the meaning set forth in the Asset Transfer Agreement.

“ Transition Services Agreement ” means the transition services agreement between Seller and Purchaser, in the form attached hereto as Exhibit D .

(c) The following defined terms have the meanings ascribed to such terms in the Sections set forth below:

Term	Section
Accounting Firm	2.02(c)
Acquisition	Recitals
Agreement	Preamble
Allocation	2.04(a)
Alternative Transaction	5.03
Anti-Bribery Laws	3.13(b)
Asset Transfer	1.01
Closing	2.01(a)
Closing Date	2.01(a)
Company	Preamble
Company Environmental Permits	3.14
Company Intellectual Property	3.07(a)
Company Permit	3.09

Term	Section
Confidentiality Agreement	6.01
Consent	3.02(b)
Contract	3.08(a)
Effective Time	2.01(a)
Estimated Statement	2.02(a)
Existing Materials	6.02(a)
Filing	3.02(b)
Final Purchase Price Elements	2.02(b)
Final Remaining Escrow Amount	10.03(d)
Financial Statements	3.04(a)
Governmental Antitrust Entity	7.02(d)(i)(B)
HSR Act	8.01(c)
indemnified party	10.06(a)
indemnifying party	10.06(a)
Interim Financial Statements	3.04(a)
Key Customers	3.18(a)
Key Vendors	3.18(b)
Lease	3.06(c)
Leased Property	3.06(b)
Licensed IP	6.02(b)
Liens	3.02(a)
Material Contract	3.08(b)
Marketing Partnership Agreement	Recitals
Notice of Disagreement	2.02(c)
Periodic Taxes	7.04(b)
Permitted Liens	3.16(c)
Proceedings	3.10
Purchaser	Preamble
Purchaser Indemnitees	10.01(a)
Purchaser Prepared Tax Returns	7.04(d)(ii)
Qualified Benefit Plan	3.11(a)
Release Date	10.05(b)
Required Consents	8.01(d)
Restricted Business	5.06(b)
Seller	Preamble
Seller Fundamental Representation	8.01(a)
Seller Indemnitees	10.02(a)
Seller Prepared Tax Returns	7.04(d)(i)
Statement	2.02(b)
Statement Principles	2.02(e)
Terminated Contracts	7.06(b)
Third Party Claim	10.06(a)
Transferred Employees	7.05(a)
Transitional License	6.02(b)
Transitional Materials	6.02(a)
Transitional Period	6.02(a)
Unaudited Financial Statements	3.04(a)
Unclaimed Remaining Escrow Amount	10.03(d)
Union Contract	3.08(a)(v)
Units	Recitals
Voting Debt	3.03(b)

SECTION 11.07. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties hereto and delivered to the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile, email or other electronic imaging means shall be as effective as delivery of a manually executed counterpart of this Agreement. Minor variations in the form of the signature page to this Agreement, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties hereto. No party hereto or to any such agreement or instrument will raise the fact that any signature or agreement or instrument was transmitted or communicated through the use of an electronic transmission in PDF as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

SECTION 11.08. Entire Agreement. This Agreement, the Other Transaction Documents and the Confidentiality Agreement contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter.

SECTION 11.09. Severability. If any term or provision of this Agreement is held to be invalid, illegal or incapable of being enforced under any applicable Law or public policy, all other conditions and provisions of this Agreement shall nonetheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the fullest extent possible.

SECTION 11.10. Specific Performance; Limitation on Liability. The parties hereto agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy would occur in the event that the parties hereto do not perform their obligations under the provisions of this Agreement (including failing to take such actions as are required of them hereunder to consummate the Acquisition and the other transactions contemplated by this Agreement) in accordance with its specified terms or otherwise breach such provisions. Subject to the immediately following sentence, the parties acknowledge and agree that prior to the valid termination of this Agreement in accordance with Article IX, (i) the parties shall be entitled to an Injunction or Injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 11.11 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement or at Law or in equity, (ii) the provisions set forth in Section 9.03 (A) are not intended to and do not adequately compensate for the harm that would result from a breach of this Agreement and (B) shall not be construed to diminish or otherwise impair in any respect any party's right to specific performance and (iii) the right of specific performance is an integral part of the transactions contemplated by this Agreement and without that right, neither Seller nor Purchaser would have entered into this Agreement. Each of the parties hereto agrees that it will not oppose the granting of an Injunction or Injunctions, specific performance and other equitable relief on the basis that the other party hereto have an adequate remedy at Law or an award of specific performance is not an appropriate remedy for any reason at Law or in equity. The parties hereto acknowledge and agree that any party seeking an Injunction or Injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 11.10 shall not be required to provide any bond or other security in connection with any such Injunction or Injunctions.

SECTION 11.11. Consent to Jurisdiction. Except with respect to any Proceeding brought by Purchaser or the Company regarding or related to the enforcement of any provision of Section 5.06, each party hereto hereby (i) agrees that any Proceeding, directly or indirectly, arising out of, under or relating to this Agreement or any transaction contemplated hereby, or for recognition or enforcement of any judgment, will be heard and determined in the Chancery Court of the State of Delaware (and each agrees that no such Proceeding relating to this Agreement will be brought by it or any of its Affiliates except in such court), subject to any appeal, provided, that if jurisdiction is not then available in the Chancery Court of the State of Delaware, then any such Proceeding may be brought in any Delaware state court or any federal court located in the State of Delaware and (ii) irrevocably and unconditionally submits to the exclusive jurisdiction of any such court in any such Proceeding. Each party hereto (A) irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of this Agreement or any transaction contemplated hereby in any court referred to in the first sentence of this Section 11.11, (B) irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum and (C) agrees that a final judgment in any such Proceeding brought in any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

SECTION 11.12. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY. EACH PARTY HERETO (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THAT FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.12.

SECTION 11.13. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

SECTION 11.14. Parent Guaranty. Subject to the provisions of this Section 11.14, Parent hereby fully, unconditionally and irrevocably guarantees to Seller (i) the due and punctual payment of the Closing Date Purchase Price, any adjustment to the Closing Date Purchase Price pursuant to Section 2.02(d), any indemnification obligations of Purchaser pursuant to Article X, and any other monetary obligations of Purchaser in accordance with the terms of this Agreement and (ii) the performance of all other obligations to be performed by Purchaser. Parent hereby acknowledges that, with respect to all of Purchaser's obligations, this guaranty shall be a guaranty of payment and not of collection and shall not be conditioned or contingent upon the pursuit of any remedies against Purchaser. Parent acknowledges that it will receive direct and indirect benefits from the consummation of the transactions contemplated by this Agreement and that the guaranties set forth in this Section 11.14 are knowingly made in contemplation of such benefits.

[*Signature Page Follows*]

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

YELP INC.

by /s/ Jeremy Stoppelman

Name: Jeremy Stoppelman

Title: CEO

EAT24, LLC

by /s/ Laurence Wilson

Name: Laurence Wilson

Title: Authorized Signatory

GRUBHUB INC.

by /s/ Adam DeWitt

Name: Adam DeWitt

Title: Chief Financial Officer

GRUBHUB HOLDINGS INC.,

by /s/ Adam DeWitt

Name: Adam DeWitt

Title: Chief Financial Officer

CERTIFICATIONS

I, Jeremy Stoppelman, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Yelp Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) 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 officer(s) 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 9, 2017

/s/ Jeremy Stoppelman

Jeremy Stoppelman
 Chief Executive Officer

CERTIFICATION

I, Charles Baker, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Yelp Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) 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 officer(s) 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 9, 2017

/s/ Charles Baker

Charles Baker
Chief Financial Officer

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. § 1350), Jeremy Stoppelman, Chief Executive Officer of Yelp Inc. (the “Company”), and Charles Baker, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company’s Quarterly Report on Form 10-Q for the period ended June 30, 2017, to which this Certification is attached as Exhibit 32.1 (the “Quarterly Report”), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned have set their hands hereto as of the 9th day of August, 2017.

/s/ Jeremy Stoppelman

Jeremy Stoppelman

Chief Executive Officer

/s/ Charles Baker

Charles Baker

Chief Financial Officer

This certification accompanies the Quarterly Report on Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Yelp Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Quarterly Report on Form 10-Q), irrespective of any general incorporation language contained in such filing.
