

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended December 31, 2022

OR

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

For the transition period from to

Commission file number 0-51813



*A Better Future for Surplus*

**LIQUIDITY SERVICES, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of  
Incorporation or Organization)

**52-2209244**

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

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

(Address of Principal Executive Offices)

**20814**

(Zip Code)

**(202) 467-6868**

(Registrant's Telephone Number, Including Area Code)

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

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
<b>Common Stock, \$0.001 par value</b>	<b>LQDT</b>	<b>Nasdaq</b>

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

The number of shares outstanding of the issuer's common stock, par value \$0.001 per share, as of January 30, 2023, was 31,573,219.

	<u>Page</u>	
<b><u>PART I. FINANCIAL INFORMATION</u></b>		
<u>Item 1.</u>	<u>Financial Statements (Unaudited)</u>	3
	<u>Condensed Consolidated Balance Sheets</u>	3
	<u>Condensed Consolidated Statements of Operations</u>	4
	<u>Condensed Consolidated Statements of Comprehensive Income</u>	5
	<u>Condensed Consolidated Statement of Stockholders' Equity</u>	6
	<u>Condensed Consolidated Statements of Cash Flows</u>	7
	<u>Notes to the Unaudited Condensed Consolidated Financial Statements</u>	8
<u>Item 2.</u>	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	19
<u>Item 3.</u>	<u>Quantitative and Qualitative Disclosures About Market Risk</u>	28
<u>Item 4.</u>	<u>Controls and Procedures</u>	28
<b><u>PART II. OTHER INFORMATION</u></b>		
<u>Item 1.</u>	<u>Legal Proceedings</u>	29
<u>Item 1A.</u>	<u>Risk Factors</u>	29
<u>Item 2.</u>	<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	29
<u>Item 3.</u>	<u>Defaults Upon Senior Securities</u>	30
<u>Item 4.</u>	<u>Mine Safety Disclosures</u>	30
<u>Item 5.</u>	<u>Other Information</u>	30
<u>Item 6.</u>	<u>Exhibits</u>	31
<b><u>SIGNATURES</u></b>		32

## Item 1. Financial Statements (Unaudited)

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

	December 31, 2022	September 30, 2022
	(Unaudited)	
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 76,166	\$ 96,122
Short-term investments	3,716	1,819
Accounts receivable, net of allowance for doubtful accounts of \$328 and \$449	7,969	11,792
Inventory, net	16,369	11,679
Prepaid taxes and tax refund receivable	1,833	1,631
Prepaid expenses and other current assets	7,585	6,551
Total current assets	113,638	129,594
Property and equipment, net	18,548	19,094
Operating lease assets	12,177	13,207
Intangible assets, net	15,252	16,234
Goodwill	89,345	88,910
Deferred tax assets	12,447	13,628
Other assets	7,794	7,437
Total assets	\$ 269,201	\$ 288,104
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 31,592	\$ 41,982
Accrued expenses and other current liabilities	21,630	23,304
Current portion of operating lease liabilities	4,559	4,540
Deferred revenue	4,022	4,439
Payables to sellers	43,635	49,238
Total current liabilities	105,437	123,503
Operating lease liabilities	8,576	9,687
Other long-term liabilities	235	378
Total liabilities	114,248	133,568
Commitments and contingencies (Note 13)		
Stockholders' equity:		
Common stock, \$0.001 par value; 120,000,000 shares authorized; 35,899,641 shares issued and outstanding at December 31, 2022; 35,724,057 shares issued and outstanding at September 30, 2022	36	36
Additional paid-in capital	260,653	258,275
Treasury stock, at cost; 4,345,018 shares at December 31, 2022, and 3,813,199 shares at September 30, 2022	(69,754)	(62,554)
Accumulated other comprehensive loss	(9,012)	(10,285)
Accumulated deficit	(26,970)	(30,936)
Total stockholders' equity	154,953	154,536
Total liabilities and stockholders' equity	\$ 269,201	\$ 288,104

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

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

	Three Months Ended December 31,	
	2022	2021
Purchase revenues	\$ 38,634	\$ 36,217
Consignment and other fee revenues	33,648	30,490
Total revenue	<u>72,282</u>	<u>66,707</u>
Costs and expenses from operations:		
Cost of goods sold (excludes depreciation and amortization)	31,773	27,762
Technology and operations	14,704	13,918
Sales and marketing	10,790	10,044
General and administrative	7,385	8,230
Depreciation and amortization	2,764	2,302
Other operating expenses (income), net	139	(32)
Total costs and expenses	<u>67,555</u>	<u>62,224</u>
Income from operations	4,727	4,483
Interest and other income, net	(389)	(131)
Income before provision for income taxes	5,116	4,614
Provision for income taxes	1,149	1,012
Net income	<u>\$ 3,967</u>	<u>\$ 3,602</u>
Basic income per common share	<u>\$ 0.12</u>	<u>\$ 0.11</u>
Diluted income per common share	<u>\$ 0.12</u>	<u>\$ 0.10</u>
Basic weighted average shares outstanding	<u>31,815,160</u>	<u>32,971,709</u>
Diluted weighted average shares outstanding	<u>32,937,600</u>	<u>34,868,869</u>

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

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

	<b>Three Months Ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Net income	\$ 3,967	\$ 3,602
Other comprehensive income (loss):		
Foreign currency translation	1,273	(131)
Other comprehensive income (loss), net of taxes	1,273	(131)
Comprehensive income	<u>\$ 5,240</u>	<u>\$ 3,471</u>

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

**Liquidity Services, Inc. and Subsidiaries**  
**Condensed Consolidated Statement of Stockholders' Equity**  
(Dollars In Thousands)

	Common Stock		Additional	Treasury Stock		Accumulate d Other Comprehen sive	Retained	Total
	Shares	Am oun t	Paid-in	Shares	Amount	Loss	Earnings	
			Capital					
Balance at September 30, 2022	35,724,057	\$ 36	\$ 258,275	(3,813,199)	\$ (62,554)	\$ (10,285)	\$ (30,936)	\$ 154,536
Net Income	—	—	—	—	—	—	3,967	3,967
Exercise of common stock options, grants of restricted stock awards, and vesting of restricted stock units	190,119	—	495	—	—	—	—	495
Taxes paid associated with net settlement of stock compensation awards	(14,536)	—	(244)	—	—	—	—	(244)
Common stock repurchase	—	—	—	(531,819)	(7,199)	—	—	(7,199)
Stock compensation expense	—	—	2,126	—	—	—	—	2,126
Foreign currency translation	—	—	—	—	—	1,273	—	1,273
Balance at December 31, 2022	35,899,640	\$ 36	\$ 260,653	(4,345,018)	\$ (69,754)	\$ (9,012)	\$ (26,970)	\$ 154,953

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

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

	Three Months Ended December 31,	
	2022	2021
<b>Operating activities</b>		
Net income	\$ 3,967	\$ 3,602
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	2,764	2,302
Stock compensation expense	2,081	2,280
Inventory adjustment to net realizable value	—	98
Provision for doubtful accounts	15	11
Deferred tax expense	1,181	881
Gain on disposal of property and equipment	(45)	(6)
Gain on disposal of lease assets	—	(205)
Changes in operating assets and liabilities:		
Accounts receivable	3,954	(1,795)
Inventory	(4,680)	(855)
Prepaid taxes and tax refund receivable	(202)	35
Prepaid expenses and other assets	(999)	(1,137)
Operating lease assets and liabilities	(65)	214
Accounts payable	(10,416)	(8,815)
Accrued expenses and other current liabilities	(1,744)	(5,193)
Deferred revenue	(417)	60
Payables to sellers	(5,935)	11,199
Other liabilities	(120)	(805)
Net cash (used in) provided by operating activities	(10,659)	1,871
<b>Investing activities</b>		
Purchases of property and equipment, including capitalized software	(1,212)	(1,964)
Cash paid for business acquisitions, net of cash acquired	—	(11,063)
Purchase of short-term investments	(1,847)	—
Other investing activities, net	44	6
Net cash used in investing activities	(3,015)	(13,021)
<b>Financing activities</b>		
Payments of the principal portion of finance lease liabilities	(25)	(27)
Taxes paid associated with net settlement of stock compensation awards	(244)	(851)
Proceeds from exercise of stock options, net of tax	496	—
Common stock repurchases	(7,199)	(2,963)
Net cash used in financing activities	(6,972)	(3,841)
Effect of exchange rate differences on cash and cash equivalents	690	(23)
Net decrease in cash and cash equivalents	(19,956)	(15,014)
Cash and cash equivalents at beginning of period	96,122	106,335
Cash and cash equivalents at end of period	\$ 76,166	\$ 91,321
<b>Supplemental disclosure of cash flow information</b>		
Cash paid (received) for income taxes, net	\$ 159	\$ (28)
Non-cash: Common stock surrendered in the exercise of stock options	—	\$ 100
Non-cash: Earnout liability for acquisition activity	—	\$ 26,900

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

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

## **1. Organization**

Liquidity Services, Inc. (Liquidity Services, the Company) is a leading global commerce company providing trusted marketplace platforms that power the circular economy. We create a better future for organizations, individuals, and the planet by capturing and unleashing the intrinsic value of surplus. We connect millions of buyers and thousands of sellers through our leading auction marketplaces, search engines, asset management software, and related services. Our comprehensive solutions enable the transparent, efficient, sustainable recovery of value from excess items owned by business and government sellers.

Our business delivers value to shareholders by unleashing the intrinsic value of surplus through our marketplace platforms. These platforms ignite and enable a self-reinforcing cycle of value creation where buyers and sellers attract one another in growing numbers. The result of this cycle is a continuous flow of goods that becomes increasingly valuable as more participants join the platforms, thereby creating positive network effects that benefit sellers, buyers, and shareholders.

Results from our operations are organized into four reportable segments: GovDeals, Retail Supply Chain Group (RSCG), Capital Assets Group (CAG) and Machinio. See Note 14 - *Segment Information* for more information regarding our segments.

Liquidity Services was incorporated in Delaware in November 1999 as Liquidation.com, Inc. and commenced operations in early 2000.

The Company's operations are subject to certain risks and uncertainties, many of which are associated with technology-oriented companies, including, but not limited to, the Company's dependence on use of the Internet; the effect of general business and economic trends including any future economic impact from the COVID-19 pandemic, ongoing Russia-Ukraine conflict, inflationary pressures, and impacts from interest rate changes; the Company's susceptibility to rapid technological change; actual and potential competition by entities with greater financial and other resources; and the potential for the commercial sellers from which the Company derives a significant portion of its inventory to change the way they conduct their disposition of surplus assets or to otherwise terminate or not renew their contracts with the Company.

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

### **Unaudited Interim Financial Information**

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles (GAAP) for interim financial information and the rules and regulations of the Securities and Exchange Commission (SEC). Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. In the opinion of management, all adjustments, consisting of normal, recurring adjustments considered necessary for a fair presentation, have been included, and intercompany transactions and accounts have been eliminated in consolidation. The information disclosed in the notes to the condensed consolidated financial statements for these periods is unaudited. Operating results for the three months ended December 31, 2022, are not necessarily indicative of the results that may be expected for the year ending September 30, 2023, or for any future period.

### **Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect amounts in the condensed consolidated financial statements and accompanying notes. For the three months ended December 31, 2022, these estimates required the Company to make assumptions about the extent and duration of continued restrictions on cross-border transactions and the impact of the COVID-19 pandemic, ongoing Russia-Ukraine conflict, and other disruptions on macroeconomic conditions and, in turn, the Company's results of operations. As there remains uncertainty associated with the COVID-19 pandemic, the Company will continue to update its assumptions as conditions change. Actual results could differ significantly from those estimates.

### **Contract Assets and Liabilities**

Contract assets reflect an estimate of expenses that will be reimbursed upon settlement with a seller. The contract asset balance was \$0.9 million as of December 31, 2022, and \$0.9 million as of September 30, 2022, and is included in the line item Prepaid expenses and other current assets on the Condensed Consolidated Balance Sheets.

Contract liabilities reflect obligations to provide services for which the Company has already received consideration, and generally arise from up-front payments received in connection with Machinio's subscription services. The contract liability balance was \$4.0 million as of December 31, 2022, and \$4.4 million as of September 30, 2022, and is included in the line item Deferred revenue on the Condensed Consolidated Balance Sheets. Of the September 30, 2022, contract liability balance, \$2.2 million was earned as other fee revenue during the three months ended December 31, 2022.

For the Company's Machinio segment, the performance obligation has been identified as the stand ready obligation to provide access to the Machinio subscription services, which it satisfies over time and recognizes as other fee revenues in the line item Consignment and other fee revenues on the Condensed Consolidated Statements of Operations. As of December 31, 2022, the Machinio segment had a remaining performance obligation of \$4.0 million; the Company expects to recognize the substantial majority of that amount as other fee revenues over the next 12 months.



### **Contract Costs**

Contract costs relate to sales commissions paid on subscription contracts that are capitalized within our Machinio segment. Contract costs are amortized over the expected life of the customer contract. The contract cost balance was \$1.8 million as of December 31, 2022, and \$1.8 million as of September 30, 2022, and is included in the line item Prepaid expenses and other current assets, and Other assets on the Condensed Consolidated Balance Sheets. Amortization expense was \$0.3 million and \$0.2 million during the three months ended December 31, 2022, and 2021, respectively.

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

For the majority of buyers that receive goods before payment to the Company is made, credit evaluations are performed. However, for the remaining buyers, goods are not shipped before payment is made, and as a result the Company is not subject to significant collection risk from those buyers.

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

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash in banks within interest bearing and earnings allowance checking accounts, as well as cash equivalent money market funds, all of which may at times exceed federally insured limits (FDIC and/or SIPC), and Accounts receivable. The Company deposits its cash in interest bearing checking accounts, acquires cash equivalent money market funds, and holds short-term investments designated as held-to-maturity investment securities, each with financial institutions that the Company considers to be of high credit quality.

Additionally, the Company has multiple vendor contracts with Amazon.com, Inc. under which the Company acquires and sells commercial merchandise. The property purchased under these contracts with Amazon.com, Inc. represented 57.3% and 60.5% of consolidated Cost of goods sold for the three months ended December 31, 2022, and 2021, respectively. These contracts are included within the RSCG reportable segment.

### **Recent Accounting Pronouncements**

#### *Accounting Standards Not Yet Adopted*

In June 2016, the FASB issued ASU 2016-13, *Measurement of Credit Losses on Financial Instruments (Topic 326)*, or Accounting Standards Codification (ASC) 326. ASC 326, including all amendments and related guidance, was designed to provide financial statement users with more useful information about the expected credit losses on financial instruments and other commitments to extend credit. ASC 326 will require estimation of expected credit losses using a methodology that takes into consideration a broad range of reasonable and supportable information. The guidance will be effective for the Company beginning on October 1, 2023 and will be applied on a modified-retrospective basis, with any cumulative-effect adjustment recorded to retained earnings on the adoption date. The Company is in the process of evaluating the impact ASC 326 will have on its condensed consolidated financial statements and expects to estimate credit losses on its financial assets such as its accounts receivable, cash equivalent money market funds, and short-term investments. While the Company has not experienced significant credit losses historically, the materiality of the impact of adoption will depend on events and conditions as of the date of adoption, which cannot be determined conclusively at this time.

### **3. Bid4Assets Acquisition**

On November 1, 2021, the Company purchased all of the issued and outstanding shares of stock of Bid4Assets, Inc. (Bid4Assets), a Maryland corporation. Bid4Assets is a leading online marketplace focused on conducting real property auctions for the government, including tax foreclosure sales and sheriff's sales. The results of Bid4Assets' operations are included within our GovDeals reportable segment and reporting unit.

The acquisition date fair value of the consideration transferred to the former shareholders of Bid4Assets was approximately \$42.7 million consisting of \$14.7 million in cash (net of working capital adjustments totaling \$0.3 million) and earn-out consideration with a fair value of \$28.0 million. Former shareholders of Bid4Assets were eligible to receive earn-out consideration of up to \$37.5 million in cash, payable based on Bid4Assets' achievement of trailing twelve-month EBITDA targets measured at the end of each calendar quarter until the quarter ended December 31, 2022.

The Company's allocation of the purchase price to the assets acquired and liabilities assumed as of the Bid4Assets acquisition date of November 1, 2021, is as follows:

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

(in thousands)	Fair Value
Cash and cash equivalents	\$ 3,576
Intangible assets	16,500
Other assets	346
Total assets acquired	20,422
Payable to sellers	3,715
Operating lease liabilities	204
Deferred tax liability	3,847
Total liabilities assumed	7,766
Net identifiable assets acquired	\$ 12,656
Goodwill	30,084
Total consideration transferred	\$ 42,739

The excess of purchase consideration over the fair value of assets acquired and liabilities assumed was recorded as Goodwill. The Goodwill associated with our acquisition includes the acquired assembled work force, and the value associated with the opportunity to leverage the workforce to continue to grow by adding additional customer relationships or new solutions in the future. Based on management's valuation of the fair value of tangible and intangible assets acquired and liabilities assumed, Goodwill of approximately \$30.1 million was recorded. The total Goodwill arising from the acquisition is included in the GovDeals reportable segment and reporting unit and is not deductible for tax purposes.

The known intangible assets acquired were determined to consist of, and fair valued at, the following:

(in thousands)	Useful Life (in years)	Fair Value
Contract intangibles	8	\$ 13,900
Developed software	3	2,200
Trade name	3	400
Total identifiable intangible assets		\$ 16,500

*Contingent Consideration*

During the year ended September 30, 2022, and as a result of the acquisition of Bid4Assets, the Company recorded contingent consideration in the amount of \$28.0 million on its Consolidated Balance Sheets. Through December 31, 2022, \$3.5 million in earn-out payments have been made. As of December 31, 2022, the remaining earn-out fair value is \$0 based upon actual performance through the final earn-out measurement period ending December 31, 2022. See further discussion of this matter within Note 11 - *Fair Value Measurement*.

*Other Information*

Revenue, net income (loss), and pro forma information related to the Bid4Assets acquisition was immaterial to the condensed consolidated financial statements and its related notes for the three months ended December 31, 2022, and 2021.

**4. Earnings per Share**

Basic net income per share is computed by dividing Net income for the period by the weighted average number of shares outstanding during the period. Diluted net income per share is computed by dividing Net income for the period by the weighted average number of shares of common stock and potentially dilutive common stock outstanding during the period. The calculation of Diluted net income per share excludes all anti-dilutive common shares.

The computation of Basic and Diluted net income per share is as follows:

	Three months ended December 31,	
	2022	2021
Numerator:		
Net Income	\$ 3,967	\$ 3,602
Denominator:		
Basic weighted average shares outstanding	31,815,160	32,971,709
Dilutive impact of stock options, RSUs and RSAs	1,122,440	1,897,160
Diluted weighted average shares outstanding	32,937,600	34,868,869
Basic income per common share	0.12	\$ 0.11
Diluted income per common share	0.12	\$ 0.10
Stock options, RSUs and RSAs excluded from income per diluted share because their effect would have been anti-dilutive	1,906,513	786,593

**5. Leases**

The Company has operating leases for its corporate offices, warehouses, vehicles and equipment. The operating leases have remaining terms of up to 4.1 years. Some of the leases have options to extend or terminate the leases. The exercise of such options is generally at the Company's discretion. The lease agreements do not contain any significant residual value guarantees or restrictive covenants. The Company also subleases excess corporate office space. The Company's finance leases and related balances are not significant.

The components of lease expense are:

	Three Months Ended December 31,	
	2022	2021
Finance lease – lease asset amortization	\$ 20	\$ 21
Finance lease – interest on lease liabilities	4	5
Operating lease cost	1,358	1,478
Operating lease impairment expense	—	—
Short-term lease cost	137	53
Variable lease cost <sup>(1)</sup>	375	384
Sublease income	(25)	(36)
<b>Total net lease cost</b>	<b>\$ 1,868</b>	<b>\$ 1,905</b>

<sup>(1)</sup> Variable lease costs primarily relate to the Company's election to combine non-lease components such as common area maintenance, insurance and taxes related to its real estate leases. To a lesser extent, the Company's equipment leases have variable costs associated with usage and subsequent changes to costs based upon an index.

Maturities of lease liabilities are:

	December 31, 2022	
	Operating Leases	Finance Leases
2023	\$ 4,023	\$ 87
2024	4,461	97
2025	3,674	68
2026	2,235	65
2027	420	12
Thereafter	—	—
<b>Total lease payments <sup>(1)</sup></b>	<b>\$ 14,814</b>	<b>\$ 329</b>
Less: imputed interest <sup>(2)</sup>	(1,347)	(29)
<b>Total lease liabilities</b>	<b>\$ 13,467</b>	<b>\$ 301</b>

<sup>(1)</sup> The weighted average remaining lease term is 3.1 years for operating leases and 3.4 years for finance leases.

<sup>(2)</sup> The weighted average discount rate is 6.2% for operating leases and 5.6% for finance leases.

Supplemental disclosures of cash flow information related to leases are:

	Three Months Ended December 31,	
	2022	2021
Cash paid for amounts included in operating lease liabilities	\$ 1,205	\$ 1,060
Cash paid for amounts included in finance lease liabilities	25	27
Non-cash: lease liabilities arising from new operating lease assets obtained	—	\$ 3,224
Non-cash: lease liabilities arising from new finance lease assets obtained	—	179
Non-cash: adjustments to lease assets and liabilities	—	\$ (205)

<sup>(1)</sup> These include adjustments due to lease modifications, renewals, and other related adjustments.

**6. Goodwill**

The carrying value and changes in the carrying value of goodwill attributable to each reportable segment were as follows:

(in thousands)	GovDeals	CAG	Machinio	Total
September 30, 2021	\$ 23,731	\$ 21,583	\$ 14,558	\$ 59,872
Addition: Bid4Assets acquisition	30,083	—	—	30,083
Translation adjustments	—	(1,045)	—	(1,045)
September 30, 2022	53,814	20,538	14,558	88,910
Translation adjustments	—	435	—	435
December 31, 2022	<b>\$ 53,814</b>	<b>\$ 20,973</b>	<b>\$ 14,558</b>	<b>\$ 89,345</b>

Goodwill is tested for impairment at the beginning of the fourth quarter and during interim periods whenever events or circumstances indicate that the carrying value may not be recoverable. The Company has continued to evaluate the impact of the COVID-19 pandemic, interest rate changes, elevated inflationary levels, and other ongoing macroeconomic disruptions on the recoverability of its goodwill. The Company did not identify any indicators of impairment that required an interim goodwill impairment test during the three months ended December 31, 2022.

## 7. Intangible Assets

Intangible assets consist of the following:

(in thousands)	Useful Life (in years)	December 31, 2022			September 30, 2022		
		Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Contract intangibles	6 - 8	\$ 17,000	\$ (4,352)	\$ 12,648	\$ 17,000	\$ (3,789)	\$ 13,211
Technology	3 - 5	5,300	(3,441)	1,859	5,300	(3,089)	2,211
Patent and trademarks	7 - 10	2,381	(1,636)	745	2,381	(1,569)	812
Total intangible assets, net		\$ 24,681	\$ (9,429)	\$ 15,252	\$ 24,681	\$ (8,447)	\$ 16,234

Future expected amortization of intangible assets at December 31, 2022, is as follows:

(in thousands)	Expected Future Amortization
Years ending September 30,	
Remainder of 2023	\$ 2,808
2024	3,252
2025	2,012
2026	1,767
2027 and thereafter	5,413
Total	\$ 15,252

Intangible asset amortization expense was \$1.0 million and \$0.8 million for the three months ended December 31, 2022, and 2021, respectively. The increase in intangible amortization expense was primarily due to the Bid4Assets acquisition as consummated on November 1, 2021.

The Company has continued to evaluate the impact of the COVID-19 pandemic, interest rate changes, elevated inflationary levels, ongoing macroeconomic disruptions, and the subsequent financial performance of Bid4Assets, on the recoverability of its long-lived assets. The Company did not identify any indicators of impairment requiring an interim impairment test on material long-lived assets during the three months ended December 31, 2022.

## 8. Income Taxes

The Company's interim effective income tax rate is based on management's best current estimate of the Company's expected annual effective income tax rate. The Company recorded pre-tax income in the first three months of fiscal year 2023 and its corresponding effective tax rate is 22.5% compared to 21.3% for the first three months of fiscal year 2022. The change in the effective tax rate for the three months ended December 31, 2022, as compared to the same period in the prior year was primarily due to state and foreign taxes, and the utilization of net operating losses. The effective tax rate differed from the U.S. statutory federal rate of 21% primarily as a result of the impact of foreign, state, and local income taxes and permanent tax adjustments.

The Inflation Reduction Act ("IRA") was enacted on August 16, 2022. The IRA includes provisions imposing a 1% excise tax on share repurchases that occur after December 31, 2022, and introduces a 15% corporate alternative minimum tax ("CAMT") on adjusted financial statement income. The CAMT will be effective for us beginning in fiscal year 2024. We currently are not expecting the IRA to have a material adverse impact on our financial statements.

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

The Company applies the authoritative guidance related to uncertainty in income taxes. ASC 740, *Income Taxes*, states that a benefit from an uncertain tax position may be recognized when it is more likely than not that the position will be sustained upon examination, including resolution of any related appeals or litigation processes, on the basis of technical merits. During the three months ended December 31, 2022, the Company recorded a benefit of \$0.1 million due to the reduction of unrecognized tax benefits related to foreign operations. The Company and its subsidiaries file income tax returns in the U.S. federal jurisdiction, various state and local jurisdictions and in foreign jurisdictions, primarily Canada and the United Kingdom. As of December 31, 2022, the Company has no open income tax examinations in the U.S. and the statute of limitations for years prior to 2019 is now closed. However, certain tax attribute carryforwards that were generated prior to fiscal year 2019 may be adjusted upon examination by tax authorities if they are utilized.

**9. Debt**

On February 10, 2022, the Company entered into a credit facility agreement (Credit Agreement) with Wells Fargo Bank, N.A. Terms of the Credit Agreement provide for revolving loans (Line of Credit) up to a maximum aggregate principal amount of \$25.0 million with a \$10.0 million sublimit for standby letters of credit. The Credit Agreement ends on March 31, 2024, at which time any remaining amounts outstanding will become due immediately.

The applicable interest rate on any draws under the Line of Credit is a variable rate per annum equal to the Daily Simple Secured Overnight Financing Rate (SOFR) in effect plus a margin ranging from 1.25% to 1.75%. Interest is payable monthly. The Company pays an Unused Commitment Fee (as defined in the Credit Agreement), on a quarterly basis, equal to 0.05% per annum on the daily amount of the available, but unused, balance on the Line of Credit. The Company also pays a Line of Credit Fee (as defined in the Credit Agreement), on a quarterly basis, equal to 1.25% on the daily amount available to be drawn for standby letters of credit. Interest incurred on any draws under the Line of Credit, as well as the Unused Commitment Fee and Letter of Credit Fee, are included within Interest and other expense (income), net in the Condensed Consolidated Statements of Operations.

The Company may draw upon the Line of Credit for general corporate purposes. Repayments of any borrowings under the Line of Credit shall become available for redraw at any time by the Company.

The Credit Agreement contains certain financial and non-financial restrictive covenants including, among others, the requirement to maintain a minimum level of earnings before interest, income taxes, depreciation and amortization (EBITDA). The Credit Agreement contains a number of affirmative and restrictive covenants including limitations on mergers, consolidations and dissolutions, investments and acquisitions, indebtedness and liens, and dividends and other restricted payments. As of December 31, 2022, the Company was in full compliance with the terms and conditions of the Credit Agreement.

During the three months ended December 31, 2022, the Company did not make any draws under the Credit Agreement. As of December 31, 2022, the Company had no outstanding borrowings under the Credit Agreement.

During the three months ended December 31, 2022, interest expense incurred by the Company under the Credit Agreement was immaterial to the condensed consolidated financial statements.

**10. Stockholders' Equity**

The changes in stockholders' equity for the prior year comparable period are as follows:

	Common Stock		Additional Paid-in Capital	Treasury Stock		Accumulat ed Other Comprehe nsive Loss	Retained Earnings	Total
	Shares	Amo unt		Shares	Amount			
	Balance at September 30, 2021	35,457,095	\$ 35	\$ 252,017	(2,222,083)	\$ (36,628)	\$ (9,011)	\$ (71,398)
Net income	—	—	—	—	—	—	3,602	3,602
Exercise of stock options, grants of restricted stock awards, and vesting of restricted stock units	131,070	1	—	—	—	—	—	1
Taxes paid associated with net settlement of stock compensation awards	(40,239)	—	(851)	—	—	—	—	(851)
Forfeitures of restricted stock awards	(14,855)	—	—	—	—	—	—	—
Common stock repurchased	—	—	—	(147,185)	(2,963)	—	—	(2,963)
Common stock surrendered in the exercise of stock options	—	—	100	(4,678)	(100)	—	—	—
Stock compensation expense	—	—	2,270	—	—	—	—	2,270
Foreign currency translation and other	—	—	—	—	—	(131)	136	5
Balance at December 31, 2021	35,533,071	\$ 36	\$ 253,536	(2,373,946)	\$ (39,691)	\$ (9,142)	\$ (67,660)	\$ 137,079

**Stock Compensation Incentive Plans**

The Company has several incentive plans under which stock options, restricted stock units (RSUs), restricted stock awards (RSAs), and cash-settled stock appreciation rights (SARs) have been issued, including the Third Amended and Restated 2006 Omnibus Long-Term Incentive Plan, as amended (LTIP), and a plan and private placement issuances related to the Company's acquisition of Machinio and Bid4Assets. As of December 31, 2022, the Company has reserved a total of 20,300,000 shares of its common stock for exercises of stock options, vesting of RSUs, and grants of RSAs under these plans. Vesting of RSUs and grants of RSAs count as 1.5x shares against the plan reserves. As of December 31, 2022, 968,585 shares of common stock remained available for use under the LTIP.

**Stock Compensation Expense**

The table below presents the components of share-based compensation expense (in thousands):

	Three Months Ended December 31,	
	2022	2021
<b>Equity-classified awards:</b>		
Stock options	\$ 475	\$ 1,077
RSUs & RSAs	1,651	1,193
Total Equity-classified award	2,126	2,270
<b>Liability-classified awards:</b>		
SARs	(44)	10
<b>Total stock compensation expense:</b>	<b>\$ 2,081</b>	<b>\$ 2,280</b>

The table below presents the components of share-based compensation expense by line item within our Condensed Consolidated Statements of Operations (in thousands):

	Three Months Ended December 31, 2022	
	2022	2021
<b>Stock-compensation expense by function</b>		
Technology and operations	\$ 256	\$ 303
Sales and marketing	508	490
General and administrative	1,317	1,487
<b>Total stock compensation expense:</b>	<b>\$ 2,081</b>	<b>\$ 2,280</b>

**Stock Options and RSUs & RSAs**

The following table presents stock option and RSUs & RSAs grant activity:

	Three Months Ended December 31, 2022
<b>Stock Options granted:</b>	
Options containing only service conditions:	175,910
Weighted average exercise price	\$ 14.42
Weighted average grant date fair value	\$ 7.48
Options containing performance conditions:	175,910
Weighted average exercise price	\$ 14.42
Weighted average grant date fair value	\$ 7.48
<b>RSUs &amp; RSAs granted:</b>	
RSUs & RSAs containing only service conditions:	425,430
Weighted average grant date fair value	\$ 15.15
RSUs & RSAs containing performance conditions:	288,420
Weighted average grant date fair value	\$ 15.15

The stock options and RSUs & RSAs containing only service conditions will vest over a four-year service period. The stock options and RSUs & RSAs containing performance conditions will vest upon the achievement of specified financial targets of the Company, a segment, or a division of a segment. Vesting is measured the first day of each fiscal quarter over the three-year terms of the awards, starting with the first fiscal quarter after the first anniversary of the grant date.

The range of assumptions used to determine the fair value of stock options using the Black-Scholes option-pricing model during the three months ended December 31, 2022, were as follows:

	Three Months Ended December 31, 2022
Dividend yield	—
Expected volatility	62.05% - 62.16%
Risk-free interest rate	3.82% - 3.88%
Expected term	4.48 - 5 years

**SARs**

During the three months ended December 31, 2022, the Company did not issue any SARs. 8,900 SARs were exercised requiring the Company to make cash payments of \$0.1 million. As of December 31, 2022, 15,250 SARs were outstanding.

**Share Repurchase Program**

From time to time, we may be authorized to repurchase issued and outstanding shares of our common stock under a share repurchase program approved by our Board of Directors. Share repurchases may be made through open market purchases, privately negotiated transactions or otherwise, at times and in such amounts as management deems appropriate. The timing and actual number of shares repurchased will depend on a variety of factors including price, corporate and regulatory requirements and other market conditions. The repurchase program may be discontinued or suspended at any time and will be funded using our available cash.

As of September 30, 2022, the Company had \$6.6 million remaining share repurchase authorization.

On December 6, 2022, the Company's Board of Directors authorized a new stock repurchase plan of up to \$8.4 million of the Company's outstanding shares of common stock through December 31, 2024.

The Company repurchased 531,819 shares for \$7.2 million during the three months ended December 31, 2022. As of December 31, 2022, the Company had \$7.8 million of remaining authorization to repurchase shares.

**Other Share Repurchases**

Separate from the share repurchase program, our stock incentive plans allow for participants to exercise stock options by surrendering shares of common stock equivalent in value to the exercise price due. Any shares surrendered to the Company in this manner are not available for future grant.

During the three months ended December 31, 2022, no shares of common stock were surrendered by participants in the exercise of stock options.

**11. Fair Value Measurement**

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

Level 1: Quoted market prices in active markets for identical assets or liabilities;

Level 2: Inputs other than Level 1 inputs that are either directly or indirectly observable; and

Level 3: Unobservable inputs developed using estimates and assumptions developed by the Company, which reflect those that a market participant would use.

*Cash and cash equivalents.* The Company had \$15.2 million and \$22.0 million of money market funds considered cash equivalents at December 31, 2022, and September 30, 2022, respectively. These assets were measured at fair value at December 31, 2022, and September 30, 2022, and were classified as Level 1 assets within the fair value hierarchy. There were no transfers between levels during the periods presented.

*Contingent consideration.* During the year ended September 30, 2022, and as a result of the acquisition of Bid4Assets, Inc. (Bid4Assets), the Company recorded preliminary fair value of contingent consideration in the amount of \$28.0 million on its Consolidated Balance Sheets as of the acquisition date. The contingent consideration was based on Bid4Assets' achievement of trailing twelve-month EBITDA targets measured at the end of each calendar quarter until the quarter ended December 31, 2022. The liability for this consideration is included in Accrued expenses and other current liabilities within the Consolidated Balance Sheets.

The changes in earn-out liability measured at fair value for which the Company has used Level 3 inputs to determine fair value during the three months ended December 31, 2022, is as follows (in thousands):

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

	<b>Contingent Consideration</b>
Balance at September 30, 2022	\$ —
Change in fair value	—
Balance at December 31, 2022	\$ —

Through December 31, 2022, \$3.5 million in earn-out payments have been made. As of September 30, 2022, the earn-out fair value was estimated to be \$0 based upon a Monte Carlo simulation of forecasted EBITDA for the final measurement period ending December 31, 2022.

As of December 31, 2022, the remaining earn-out fair value is \$0 based upon actual performance through the final earn-out measurement period ending December 31, 2022.

*Other Information.* When valuing its Level 3 liability, management's estimation of fair value is based on the best information available in the circumstances and may incorporate management's own assumptions around market demand which could involve a level of judgment, taking into consideration a combination of internal and external factors.

The Company's financial assets and liabilities not measured at fair value are cash, short-term investments, accounts receivable, and accounts payable. The Company believes the carrying values of these instruments approximate fair value.

As of December 31, 2022, the Company had no non-financial instruments measured at fair value on a non-recurring basis other than fair value measurements associated with the purchase accounting for Bid4Assets. As of December 31, 2022, and September 30, 2022, the Company did not have any material assets or liabilities measured at fair value on a non-recurring basis.

## 12. Defined Benefit Pension Plan

Certain employees of Liquidity Services UK Limited (GoIndustry), which the Company acquired in July 2012, are covered by the Henry Butcher Pension Fund and Life Assurance Scheme (the Scheme), a qualified defined benefit pension plan. The Company guarantees GoIndustry's performance on all present and future obligations to make payments to the Scheme for up to a maximum of £10 million British pounds. The Scheme was closed to new members on January 1, 2002.

The net periodic (benefit) is recognized within Interest and other (income), net in the Condensed Consolidated Statements of Operations, and for the three months ended December 31, 2022 and 2021, included the following components:

(in thousands)	Three Months Ended December 31,	
	2022	2021
Service cost	\$ —	\$ —
Interest cost	196	\$ 132
Expected return on plan assets	(216)	(235)
Amortization of prior service cost	6	5
Settlement loss	—	—
Total net periodic benefit	\$ (14)	\$ (98)

## 13. Legal Proceedings and Other Contingencies

The Company reserves for contingent liabilities based on ASC 450, *Contingencies*, when it determines that a liability is probable and reasonably estimable.

From time to time, the Company may become involved in litigation relating to claims arising in the ordinary course of the business. However, unless otherwise noted, there are no claims or actions pending or threatened against the Company that, if adversely determined, would in the Company's management's judgment have a material adverse effect on the Company.

### *Former Employee Matters*

In May 2021, the Company's former Vice President, Human Resources filed a complaint against the Company in federal court in Montgomery County, Maryland, alleging wrongful termination on the basis of gender, race, and age. The parties have completed the discovery phase of this case. On April 4, 2022, the Company filed a motion for summary judgment. The court granted the motion with respect to the age discrimination claim but denied the motion with respect to the race and gender discrimination claims. The Company believes the remaining claims are without merit and cannot estimate a range of potential liability, if any, at this time. The Company's employment practices liability insurance carrier, CNA, has accepted tender of this claim.



In October 2021, the Company's former Chief Marketing Officer (the "Former CMO") filed a claim with the Equal Employment Opportunity Commission (the "EEOC"), alleging wrongful termination on the basis of race and age and that the Company retaliated against him. The Company submitted its position statement to the EEOC on February 8, 2022. To date, the EEOC has not taken any action in connection with the Former CMO's claim. On December 28, 2022, the Former CMO filed a complaint in federal court in Montgomery County, Maryland, which contains the same allegations made in his EEOC claim. The Company believes these claims are without merit and cannot estimate a range of potential liability, if any, at this time. CNA has accepted tender of these claims as well.

Unless otherwise noted, based on the information currently available, there are no claims or actions pending or threatened against the Company that, if adversely determined, would have, in Company's management's judgement based on the information known to management, a material adverse effect on the Company.

#### **14. Segment Information**

The Company provides operating results in four reportable segments: GovDeals, Retail Supply Chain Group (RSCG), Capital Asset Group (CAG), and Machinio. Descriptions of our reportable segments are as follows:

- The GovDeals reportable segment provides self-directed service solutions that enable federal, state, and local government entities including city, county and state agencies located in the United States and Canada, to sell surplus, salvage and real estate assets through the GovDeals and Bid4Assets marketplaces.
- The RSCG reportable segment consists of marketplaces that enable corporations located in the United States and Canada to sell surplus and salvage consumer goods. RSCG also offers a suite of services that includes returns management, asset recovery, and e-commerce services. This segment uses the Liquidation.com, Secondipity and AllSurplus marketplaces.
- The CAG reportable segment provides managed and self-directed service solutions to sellers and consists of marketplaces that enable commercial businesses to sell surplus and idle assets. CAG also offers a suite of services that includes surplus management, asset valuation, asset sales and marketing. Commercial seller assets are located across the Americas, Europe, Australia, Asia, and Africa. This segment uses the AllSurplus and GoIndustry DoveBid marketplaces.
- The Machinio reportable segment operates a global search engine platform for listing used equipment for sale in the construction, machine tool, transportation, printing and agriculture sectors. Machinio also offers the Machinio System service that provides equipment sellers with a set of online marketing tools that includes website hosting, email marketing, and inventory management.

We also report results for Corporate & Other, including elimination adjustments.

Decisions concerning the allocation of the Company's resources are made by the Company's Chief Operating Decision Maker (CODM), which is the Company's Chief Executive Officer, with oversight by the Board of Directors. The Company reports reportable segment information based on the internal performance measures used by the CODM to assess the performance of each operating segment in a given period. In connection with this assessment, the CODM uses direct profit to evaluate the performance of each segment. Segment direct profit, previously referred to as segment gross profit, continues to be calculated as total revenue less cost of goods sold (excluding depreciation and amortization).

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

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

(in thousands)	Three Months Ended December 31,	
	2022	2021
<b>GovDeals:</b>		
Purchase revenue	\$ —	\$ —
Consignment and other fee revenues	13,607	13,984
Total revenue	13,607	13,984
Segment direct profit	\$ 12,892	\$ 13,295
<b>RSCG:</b>		
Purchase revenue	\$ 35,870	\$ 32,083
Consignment and other fee revenues	10,145	6,601
Total revenue	46,015	38,684
Segment direct profit	\$ 16,011	\$ 14,257
<b>CAG:</b>		
Purchase revenue	\$ 2,763	\$ 4,134
Consignment and other fee revenues	6,629	7,073
Total revenue	9,393	11,207
Segment direct profit	\$ 8,502	\$ 8,719
<b>Machinio:</b>		
Purchase revenue	\$ —	\$ —
Consignment and other fee revenues	3,267	2,832
Total revenue	3,267	2,832
Segment direct profit	\$ 3,105	\$ 2,674
<b>Corporate &amp; Other, including elimination adjustments:</b>		
Purchase revenue	\$ —	\$ —
Consignment and other fee revenues	—	—
Total revenue	—	—
Segment direct profit	\$ —	\$ —
<b>Consolidated:</b>		
Purchase revenue	\$ 38,634	\$ 36,217
Consignment and other fee revenues	33,648	30,490
Total revenue	72,282	66,707
Total Segment direct profit	\$ 40,509	\$ 38,945

The following table reconciles segment direct profit used in the reportable segments to the Company's consolidated results:

(in thousands)	Three Months Ended December 31,	
	2022	2021
<b>Reconciliation:</b>		
Total segment direct profit	\$ 40,509	\$ 38,945
Other costs and expenses from operations <sup>(1)</sup>	35,643	34,494
Interest and other income, net	(249)	(163)
Income before provision for income taxes	\$ 5,116	\$ 4,614

<sup>(1)</sup> Other costs and expenses from operations is defined as Total costs and expenses from operations per the Condensed Consolidated Statements of Operations, less Cost of goods sold (which is included in the calculation of Segment direct profit).

The percent of our revenues that came from transactions conducted outside of the United States for the three months ended December 31, 2022, and 2021 was 13.5% and 13.5%, respectively.

## FORWARD-LOOKING STATEMENTS

*This document contains forward-looking statements. These statements are only predictions. The outcome of the events described in these forward-looking statements is subject to known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. These risks and other factors include but are not limited to the factors set forth in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022, and subsequent filings with the Securities and Exchange Commission (SEC). You can identify forward-looking statements by terminology such as "may," "will," "should," "could," "would," "expects," "intends," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continues" or the negative of these terms or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. There may be other factors of which we are currently unaware or deem immaterial that may cause our actual results to differ materially from the forward-looking statements.*

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

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

### Overview

*About us.* Liquidity Services is a leading global commerce company providing trusted marketplace platforms that power the circular economy. We create a better future for organizations, individuals, and the planet by capturing and unleashing the intrinsic value of surplus. We connect millions of buyers and thousands of sellers through our leading auction marketplaces, search engines, asset management software, and related services. Our comprehensive solutions enable the transparent, efficient, sustainable recovery of value from excess items owned by business and government sellers.

Our business delivers value to shareholders by unleashing the intrinsic value of surplus through our marketplace platforms. These platforms ignite and enable a self-reinforcing cycle of value creation where buyers and sellers continue to attract one another in ever-increasing numbers. The result is a continuous flow of goods that becomes increasingly valuable as more participants join the platform, thereby creating positive network effects that benefit sellers, buyers, and shareholders.

Results from our operations are organized into four reportable segments: GovDeals, Retail Supply Chain Group (RSCG), Capital Assets Group (CAG), and Machinio. See Note 14 - *Segment Information* to the condensed consolidated financial statements for more information regarding our segments.

### Macroeconomic Conditions

*Supply chain challenges and shifting consumer sentiment.* Constraints in the production of new vehicles, particularly as it relates to new fleet sales, are currently limiting the supply of used vehicles available for sale on our marketplaces, while used car market price indices are simultaneously experiencing heightened volatility. In addition, general consumer behavior appears to be more cautious, focused more on essential goods with limited discretionary high-value purchases. These conditions are slowing our GMV, Revenues, Segment direct profit and Segment direct profit margins, and may continue to do so while these conditions persist, or if similar challenges emerge in other key asset categories.

*Effects of Inflation.* Rising inflation in both the U.S. and internationally has weighed on the global economy, increasing prices for energy, shipping, and labor, among other areas of the macroeconomic environment. These events have caused a rise in borrowing costs as well, partly driven by actions taken by central banks to curb rising inflation. Currently, the Company is unable to predict the likelihood, magnitude and timing of inflationary risk to our business, if any. As a marketplace operator, the GMV, revenues and costs of revenues that result from our primarily auction-based sales may be influenced by macroeconomic factors, including but not limited to inflation, whose impacts may vary across each of our individual asset classes.

*Russia-Ukraine Conflict.* The global financial markets have experienced volatility subsequent to the invasion of Ukraine by Russia in February 2022, a conflict which remains ongoing. In response to the invasion, numerous countries, including the United States, imposed significant new sanctions and export controls against Russia, Russian banks and certain Russian individuals. The conflict has further heightened global supply chain disruptions and impacted the international trade and energy markets. For the three months ended December 31, 2022, and 2021, the Company's total revenues directly associated with Russia and Ukraine were not material to our consolidated financial results. We will continue monitoring the events in Ukraine and any potential future impacts on our business.

**COVID-19 Pandemic.** The Company has been closely monitoring the COVID-19 pandemic. In April 2020, the Company experienced the largest impacts on its operations thus far stemming from the initial actions taken by governments and the private sector to limit the spread of COVID-19. The restrictions on economic activity were caused, in part, by business closures, limitations on the operations of business activity and significant prioritization of essential business functions. COVID-19 and its variants continue to impact the global economy, supply chains, and the ability to conduct commerce due to ongoing travel restrictions in various countries, and episodic lockdowns within regions of China. Additionally, the COVID-19 pandemic in combination with various macroeconomic factors has impacted the supply chain of new vehicles, and construction and heavy equipment production, which in turn negatively affected the supply of used vehicles and construction and heavy equipment being sold in North America.

At this time, the likelihood, magnitude and timing of business developments across our reportable segments are difficult to predict given the current economic uncertainty, unknown duration and overall impact of the global pandemic. As a result, prior trends in the Company's results of operations may not be applicable throughout the duration of the COVID-19 pandemic. Throughout the COVID-19 pandemic, the Company has actively monitored its liquidity position and working capital needs. The Company believes that its liquidity position and working capital are more than sufficient to meet its projected needs.

### **Industry Trends**

We believe there are several industry trends positively impacting the long-term growth of our business including:

- the increase in volume of returned merchandise handled both online and in stores as online and omni-channel retail grow as a percentage of overall retail sales;
- the increase in government regulations and the need for corporations to have sustainability solutions with verifiable recycling and remarketing of surplus assets;
- the increase in outsourcing surplus disposition and end-of-life assets by corporations and government entities as they focus on reducing costs, improving transparency, compliance and working capital, and increasingly prefer service providers with proven track records, innovative scalable solutions and the ability to make a strategic impact in the reverse supply chain;
- an increase in buyer demand for surplus merchandise as consumers trade down by purchasing less expensive goods and seek greater value from their purchases, which could impact our long term growth;
- the increase in demand from sellers and buyers to transact in a low touch, online solution as compared to live, in-person auctions or public sale events; and
- in the long-term we expect innovation in the retail supply chain will increase the pace of product obsolescence and, therefore, increase the supply of surplus assets.

### **Our Marketplace Transactions**

We believe our marketplaces benefit over time from greater scale and adoption by our constituents creating a continuous flow of goods benefiting our buyers and sellers. As of December 31, 2022, we had 5.0 million registered buyers in our marketplaces. We had access to millions of additional end-users through a range of external consumer marketplaces. Aggregating this level of buyer demand and market data enables us to generate a continuous flow of goods from corporate and government sellers, which in turn attracts an increasing number of buyers. During the twelve months ended December 31, 2022, the approximate number of registered buyers increased from 4,713,000 to 4,958,000, or 5%. As buyers continue to discover and use our e-commerce marketplaces as an effective method to source assets, we believe our solutions become an increasingly attractive sales channel for corporate and government agency sellers. We believe this self-reinforcing cycle results in greater transaction volume and enhances the value of our marketplaces.

### **Revenues**

Substantially all of our revenue is earned through the following transaction models:

*Purchase model.* Under our purchase transaction model, we recognize revenue within the Purchase revenues line item on the Condensed Consolidated Statements of Operations from the resale of inventory that we purchased from sellers. We consider these sellers to be our vendors. We pay our sellers either a fixed amount or a portion of the net or gross proceeds received from our completed sales based on the value we receive from the sale, in some cases, after deducting a required return to us that we have negotiated with the seller. Because we are the principal in purchase transaction model sales, we recognize as revenue the sale price paid by the buyer upon completion of a transaction. The proceeds paid by buyers also include transaction fees, referred to as buyer premiums. Revenue from our purchase transaction model accounted for 53.4% and 54.3% of our Total revenue for the three months ended December 31, 2022, and 2021, respectively, and 14.3% and 14.5% of our Gross Merchandise Volume (GMV) for the three months ended December 31, 2022, and 2021, respectively. These amounts included sales of commercial merchandise sourced from multiple vendor contracts with Amazon.com, Inc. by our RSCG segment. The commercial merchandise we purchased under these contracts represented 57.3% and 60.5% of Cost of goods sold for the three months ended December 31, 2022, and 2021, respectively.

**Consignment model.** Under our consignment transaction model, we enable our sellers to sell goods they own in our marketplaces, and we charge them a commission fee based on the gross or net proceeds received from such sales. The revenue from our consignment transaction model is recognized upon auction close or upon collection of auction proceeds, depending upon the settlement service level selected by the seller. Revenue under the consignment model is recorded within the Consignment and other fee revenues line item on the Condensed Consolidated Statements of Operations. Because we are the agent in consignment model sales, our commission fee revenue, which we refer to as seller commissions, represents a percentage of the sales price the buyer pays upon completion of a transaction. We vary the percentage amount of the seller commission depending on the various value-added services we provide to the seller to facilitate the transaction. For example, we generally increase the percentage amount of the commission if we take possession, handle, ship, or provide enhanced product information for the merchandise. In most cases we collect the seller commission by deducting the appropriate amount from the sales proceeds prior to the distribution to the seller after completion of the transaction. In addition to seller commissions, we also collect buyer premiums. Revenue from our consignment transaction model accounted for 38.9% and 38.4% of our Total revenue for the three months ended December 31, 2022, and 2021, respectively, and 85.7% and 85.5% of our GMV for the three months ended December 31, 2022, and 2021, respectively.

**Other fee revenues.** We also earn non-consignment fee revenue from Machinio's subscription services, as well as other services including asset valuation. Non-consignment fee revenue is recorded within the Consignment and other fee revenues line item on the Condensed Consolidated Statements of Operations. Other fee revenues accounted for 7.7% and 7.3% of our Total revenues for the three months ended December 31, 2022, and 2021, respectively.

## **Our Vendor Agreements**

**Commercial agreements.** We have multiple vendor contracts with Amazon.com, Inc. under which we acquire and sell commercial merchandise. While purchase model transactions account for less than 20% of our total GMV, the cost of inventory for purchase model transactions is the most significant component of our consolidated Costs of goods sold. The property we purchased under these contracts represented 57.3% and 60.5% Cost of goods sold for the three months ended December 31, 2022, and 2021, respectively. This contract is included within our RSCG segment. Our agreements with our other sellers are generally terminable at will by either party.

## **Key Business Metrics**

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

**Gross merchandise volume (GMV).** GMV is the total sales value of all merchandise sold by us or our sellers through our marketplaces or by us through other channels during a given period of time. We review GMV because it provides a measure of the volume of goods being sold in our marketplaces and thus the activity of those marketplaces. GMV also provides a means to evaluate the effectiveness of investments that we have made and continue to make, including in the areas of buyer and seller support, value-added services, product development, sales and marketing, and operations. Our GMV for the three months ended December 31, 2022, was \$270.8 million.

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

Total registered buyers, as of a given date, represent the aggregate number of persons or entities who have registered on one of our marketplaces. We use this metric to evaluate how well our marketing and promotional efforts are performing. Total registered buyers exclude duplicate registrations, buyers who are suspended from utilizing our marketplaces and buyers who have voluntarily removed themselves from our registration database. In addition, if we become aware of registered buyers that are no longer in business, we remove them from our database. As of December 31, 2022, and 2021, we had 5.0 million and 4.7 million, registered buyers, respectively. None of our buyers represented more than 10% of our revenue during the three months ended December 31, 2022.

**Total auction participants.** For each auction we manage, the number of auction participants represents the total number of registered buyers who have bid one or more times in that auction. As a result, a registered buyer who bids, or participates, in more than one auction is counted as an auction participant in each auction in which he or she participates. Thus, total auction participants for a given period is the sum of the auction participants in each auction conducted during that period. We use this metric to allow us to compare our online auction marketplaces to our competitors, including other online auction sites and traditional on-site auctioneers. In addition, we measure total auction participants on a periodic basis to evaluate the activity level of our base of registered buyers and to measure the performance of our marketing and promotional efforts. During the three months ended December 31, 2022, and 2021, 744,000 and 642,000 participants participated in auctions on our marketplaces, respectively.

**Completed transactions.** Completed transactions represents the number of auctions in a given period from which we have recorded revenue. Similar to GMV, we believe that completed transactions is a key business metric because it provides an additional measurement of the volume of activity flowing through our marketplaces. During the three months ended December 31, 2022, and 2021, we completed 214,000 and 211,000 transactions, respectively.

## Critical Accounting Policies and Estimates

The Company's critical accounting policies and estimates are described in our Annual Report on Form 10-K for the year ended September 30, 2022, and in Note 2 — *Summary of Significant Accounting Policies* to the condensed consolidated financial statements. The following discussion is a supplement to the disclosures referenced in connection with accounting estimates made in preparing the purchase accounting for the Bid4Assets acquisition completed during the year ended September 30, 2022.

**Earn-out liability.** Following the acquisition of Bid4Assets during the year ended September 30, 2022, shareholders of Bid4Assets were eligible to receive up to \$37.5 million in cash, payable based on Bid4Assets' achievement of trailing twelve-month EBITDA targets measured at the end of each calendar quarter until the quarter ended December 31, 2022. The earn-out consideration was preliminarily fair valued at approximately \$28.0 million as of the acquisition date on November 1, 2021. As of December 31, 2022, \$3.5 million in earn out payments have been made, and the remaining earn-out fair value is \$0 based upon actual performance through the final earn-out measurement period ending December 31, 2022. During the year ended September 30, 2022, the significant unobservable inputs used in the fair value measurement categorized within Level 3 of the fair value hierarchy included estimated results of operations over the earn-out period, a high level of volatility of operating results given the nature of the business model and its economic environment create a wider range of potential outcomes over the earn-out period, and the discount rate.

**Goodwill.** Goodwill represents the costs in excess of the fair value of net assets acquired through acquisitions by the Company. Pursuant to our purchase price allocation, goodwill arising from the Bid4Assets acquisition was determined to be \$30.1 million. As discussed in Note 11 – *Fair Value Measurement*, the fair value of the Bid4Assets earn-out liability declined by \$24.5 million during the fiscal year ended September 30, 2022. As of December 31, 2022, there was determined to be no remaining earn-out liability. The decline in earn-out liability since the acquisition date was due to timing changes, which were not known nor knowable as of the acquisition date, impacting the level of auction events and transactions that were expected to occur during the earn-out period ending December 31, 2022. These timing changes have not reflected substantive changes to the long-term outlook for real estate sales within the GovDeals segment and were not considered a triggering event for testing goodwill or long-lived assets for impairment as of December 31, 2022. The Company will continue to monitor for changes that could impact the recoverability of its goodwill.

## Components of Revenue and Expenses

**Revenue.** Refer to the discussion in the *Our revenue* section above, and to Note 2 — *Summary of Significant Accounting Policies* in our Annual Report on Form 10-K for discussion of the Company's related accounting policies.

**Cost of goods sold.** Refer to the discussion in Note 2 — *Summary of Significant Accounting Policies* in our Annual Report on Form 10-K for discussion of the Company's Costs of goods sold and related accounting policies.

**Technology and operations.** Technology expenses primarily consist of the cost of technical staff (including stock compensation), third party services, licenses, and infrastructure, all as required to develop, configure, deploy, maintain, and secure our marketplace platforms, business operational systems, and facilities. Technology expenses are net of the required capitalization of costs associated with enhancing our marketplace platforms and other software development activities. Depreciation and amortization of capitalized software development costs, purchased software, acquired developed software intangible assets, and computer hardware are included within Depreciation and amortization in the accompanying Condensed Consolidated Statements of Operations. Technology expenses are presented separately from Costs of goods sold (excluding depreciation and amortization) in the Condensed Consolidated Statements of Operations, as these expenses provide for the general availability of our marketplace platforms and other business operational systems and are not attributable to specific revenue generating transaction activity occurring on our marketplaces.

Because our marketplaces and support systems require frequent upgrades and enhancements to maintain viability, we have determined that the useful life for certain internally developed software is less than one year. As a result, we expense those costs as incurred. However, where we determine that the useful life of the internally developed software will be greater than one year, we capitalize development costs in accordance with ASC 350-40, *Internal-use software*. As such, we are capitalizing certain development costs associated with our e-commerce platform, as well as other software development activities.

Operations expenses consist primarily of costs to operate our distribution centers, including shipping logistics, inventory management, refurbishment, and administrative functions; costs to enhance our online auctions listings and provide customer support; and costs associated with field support and preparation and transfer of goods from sellers to buyers. Operations expenses include both internal and external labor costs, as well as other third-party charges. These costs are expensed as incurred.

**Sales and marketing.** Sales and marketing expenses include the cost of our sales and marketing personnel as well as the cost of marketing and promotional activities, including buyer and seller acquisition, as well as general brand marketing. These activities include online marketing campaigns such as paid search advertising, as well as offline marketing efforts, trade shows, and marketing analytics.

**General and administrative.** General and administrative expenses include all corporate and administrative functions that support our operations and provide an infrastructure to facilitate our future growth. These expenses are generally more fixed in nature than our other operating expenses and do not significantly vary in response to the volume of merchandise sold through our marketplaces.

**Depreciation and amortization.** Depreciation and amortization consist of depreciation of property and equipment, amortization of internally developed software, and amortization of intangible assets.

**Fair value adjustment of acquisition earn-outs.** Fair value adjustment of acquisition earn-outs consists of the change in fair value of earn-out consideration following a business combination.

**Other operating expenses (income).** Other operating expenses, net includes impairment of long-lived and other assets, impacts of lease terminations, as well as business realignment expenses, including those associated with restructuring initiatives and the exit of certain business operations.

**Interest and other income, net.** Interest and other income, net consists of interest income on interest bearing checking accounts, money market funds, interest and unused commitment fees in connection with the Company's Credit Agreement, the components of net periodic pension (benefit) other than the service component, and impacts of foreign currency fluctuations.

**Income taxes.** For interim income tax reporting, we estimate our annual effective tax rate and apply this effective tax rate to our year-to-date pre-tax income (loss). Our effective income tax rate after discrete items was 22.5% for the three months ended December 31, 2022. The effective tax rate differed from the statutory federal rate of 21% primarily as a result of the impact of foreign, state, and local income taxes and permanent tax adjustments.

## Results of Operations

The following table sets forth, for the periods indicated, our operating results:

	Three Months Ended December 31,		Change	
	2022	2021	\$	%
Purchase revenues	\$ 38,634	\$ 36,217	\$ 2,417	6.7 %
Consignment and other fee revenues	33,648	30,490	3,158	10.4 %
Total revenue	72,282	66,707	5,575	8.4 %
Costs and expenses from operations:				
Cost of goods sold (excludes depreciation and amortization)	31,773	27,762	4,011	14.4 %
Technology and operations	14,704	13,918	786	5.6 %
Sales and marketing	10,790	10,044	746	7.4 %
General and administrative	7,385	8,230	(845)	(10.3) %
Depreciation and amortization	2,764	2,302	462	20.1 %
Other operating expenses (income), net	139	(32)	171	NM
Total costs and expenses	67,555	62,224	5,331	8.6 %
Income from operations	4,727	4,483	244	5.4 %
Interest and other income, net	(389)	(131)	(258)	(196.7) %
Income before provision for income taxes	5,116	4,614	502	10.9 %
Provision for income taxes	1,149	1,012	137	13.5 %
Net income	\$ 3,967	\$ 3,602	\$ 365	10.1 %

NM = not meaningful

The following table presents reportable segment GMV, revenue, segment direct profit (previously referred to as segment gross profit which continues to be calculated as total revenue less cost of goods sold (excluding depreciation and amortization)), and segment direct profit as a percentage of total revenue for the periods indicated:

(dollars in thousands)	Three Months Ended December 31,	
	2022	2021
<b>GovDeals:</b>		
GMV	\$ 161,122	\$ 156,935
Total revenue	\$ 13,607	\$ 13,984
Segment direct profit	\$ 12,892	\$ 13,295
Segment direct profit as a percentage of total revenue	94.7 %	95.1 %
<b>RSCG:</b>		
GMV	\$ 64,897	\$ 53,369
Total revenue	\$ 46,015	\$ 38,684
Segment direct profit	\$ 16,011	\$ 14,257
Segment direct profit as a percentage of total revenue	34.8 %	36.9 %
<b>CAG:</b>		
GMV	\$ 44,756	\$ 49,862
Total revenue	\$ 9,393	\$ 11,207
Segment direct profit	\$ 8,502	\$ 8,719
Segment direct profit as a percentage of total revenue	90.5 %	77.8 %
<b>Machinio:</b>		
GMV	—	—
Total revenue	\$ 3,267	\$ 2,832
Segment direct profit	\$ 3,105	\$ 2,674
Segment direct profit as a percentage of total revenue	95.0 %	94.4 %
<b>Consolidated:</b>		
GMV	\$ 270,775	\$ 260,166
Total revenue	\$ 72,282	\$ 66,707

## Three Months Ended December 31, 2022, Compared to the Three Months Ended December 31, 2021

### Segment Results

**GovDeals.** Total revenues from our GovDeals reportable segment decreased 2.7%, or \$0.4 million, as macroeconomic challenges have slowed the supply of used vehicles. While GMV increased 2.7%, or \$4.2 million, which also reflects an increase in market share and expansion of our real estate category, the used vehicles headwinds increased the relative mix of real estate sales, which are generally conducted at a lower take-rate (i.e., revenue as a percentage of GMV) than our traditional GovDeals asset categories, and caused revenue as a percentage of GMV to decrease to 8.4% from 8.9% last year. As a result of the decrease in revenues, segment direct profit decreased 3.0%, or \$0.4 million. Segment direct profit as a percentage of total revenue remained relatively consistent between the periods.

**RSCG.** Revenue from our RSCG reportable segment increased \$7.3 million, or 18.9%, due to an \$11.5 million, or 21.6%, rise in GMV through continued diversification in its client programs, primarily under the consignment model, as well as expanded buyer channels and distribution networks. Segment direct profit increased by \$1.8 million, or 12.3%, while segment direct profit as a percentage of total revenue declined from 36.8% to 34.8%, as changes in consumer sentiment have affected our product mix, which has a higher proportion of lower value products than the prior year.

**CAG.** Revenue from the CAG reportable segment decreased by \$1.8 million, or 16.2%, due to a \$5.1 million, or 10.2%, decrease in GMV primarily due to project timing and the availability of international spot purchase transactions. As a result of the decrease in revenues, segment direct profit decreased \$0.2 million, or 2.5%. Segment direct profit as a percentage of total revenue increased 12.7% due to favorable margins for international transactions as compared to the prior year. Challenged global supply chains are experiencing heightened disruptions from the Russian invasion of Ukraine and its impacts on international trade and energy markets, COVID-19 and other disruptions, which could limit the volume of assets made available for sale in any period.

**Machinio.** Revenue from our Machinio reportable segment increased 15.3%, or \$0.4 million, due to continued increases in subscriptions. As a result of the increase in revenues, segment direct profit increased 16.0%, or \$0.4 million. Segment direct profit as a percentage of total revenue remained relatively consistent between the periods.

### Consolidated Results

**Total revenues** - Total consolidated revenue increased \$5.6 million, or 8.4%. Refer to the discussion of Segment Results above for discussion of the increase in revenue.

**Cost of goods sold (excludes depreciation and amortization).** Cost of goods sold increased \$4.0 million, or 14.4%, which changed at a higher rate than Total revenues primarily due to an increase in purchase transactions at the RSCG segment.

**Technology and operations expenses.** Technology and operations expenses increased \$0.8 million, or 5.6%, from the impact of the growth in our distribution network facilities, market share expansion, and client diversification efforts that occurred throughout the past year, as well as other inflationary cost increases.

**Sales and marketing expenses.** Sales and marketing expenses increased \$0.7 million, or 7.4%, from the impact of our market share expansion and client diversification efforts that occurred throughout the past year, as well as other inflationary cost increases, and partially offset by a \$0.9 million non-recurring benefit from a concluded client program.

**General and administrative expenses.** General and administrative expenses decreased \$0.8 million, or 10.3%, as variable costs were incurred in the past year to support the expansion of our sales, marketing, technology and operations functions.

**Depreciation and amortization.** Depreciation and amortization expense increased \$0.5 million, or 20.0%, primarily due to the increase in intangible assets following our acquisition of Bid4Assets on November 1, 2021.

**Other operating expenses (income).** Other operating expenses (income) was consistent between the three months ended December 31, 2022 and 2021.

**Interest and other (income), net.** Interest and other expenses (income), net increased \$0.3 million, due to the effect of rising interest rates on our cash equivalent and short-term investment holdings.

**Provision for income taxes.** Provision for income taxes increased \$0.1 million due to the impact of foreign, state, and local taxes and permanent tax adjustments.

### Non-GAAP Financial Measures

**Non-GAAP EBITDA and Non-GAAP Adjusted EBITDA.** Non-GAAP EBITDA is a supplemental non-GAAP financial measure and is equal to Net income (loss) plus Interest and other expense (income), net excluding the non-service components of net periodic pension (benefit); Provision (benefit) for income taxes; and Depreciation and amortization. Interest and other expense (income), net, can include non-operating gains and losses, such as from foreign currency fluctuations. Our definition of Non-GAAP Adjusted EBITDA differs from Non-GAAP EBITDA because we further adjust Non-GAAP EBITDA for stock-based compensation expense, acquisition costs such as transaction expenses and changes in earn out estimates, business realignment expense, and goodwill, long-lived asset and other non-current asset impairment.



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

- Depreciation and amortization expense primarily relates to property and equipment and the amortization of intangible assets. These expenses are non-cash charges that have fluctuated significantly in the past. As a result, we believe that adding back these non-cash charges is useful in evaluating the operating performance of our business on a consistent basis from year-to-year.
- As a result of varying federal and state income tax rates, we believe that presenting a financial measure that adjusts for provision for income taxes is useful to investors when evaluating the operating performance of our business on a consistent basis from year to year.
- The authoritative guidance for stock-based compensation requires all share-based payments to employees, including grants of employee stock options, restricted stock and stock appreciation rights to be recognized in the income statement based on their estimated fair values over the requisite vesting period. We believe adjusting for this stock-based compensation expense is useful to investors when evaluating the operating performance of our business on a consistent basis from year to year.
- The authoritative guidance related to business combinations requires the initial recognition of contingent consideration at fair value based upon information known or knowable as of the acquisition date, with subsequent changes in fair value recorded through the Consolidated Statements of Operations and disallows the capitalization of transaction costs. We believe adjusting for these acquisition related expenses is useful to investors when evaluating the operating performance of our business on a consistent basis from year-to-year.
- We believe adjusting for business realignment expense is useful to investors when evaluating the operating performance of our business on a consistent basis from year-to-year, as these expenses are outside our ordinary course of business.
- We believe isolating non-cash charges, such as amortization and depreciation, and other items, such as impairment costs incurred outside our ordinary course of business, provides additional information about our cost structure, and, over time, helps track our performance.
- We believe Non-GAAP EBITDA and Non-GAAP Adjusted EBITDA are important indicators of our operational strength and the performance of our business because they provide a link between profitability and operating cash flow.
- We also believe that analysts and investors use Non-GAAP EBITDA and Non-GAAP Adjusted EBITDA as supplemental measures to evaluate the overall operating performance of companies in our industry.

Our management uses Non-GAAP EBITDA and Non-GAAP Adjusted EBITDA:

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

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

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

The table below reconciles Net income to Non-GAAP EBITDA and Non-GAAP Adjusted EBITDA for the periods presented.

	Three Months Ended December 31,	
	2022	2021
Net income	\$ 3,967	\$ 3,602
Interest and other income, net <sup>1</sup>	(303)	(33)
Provision for income taxes	1,149	1,012
Depreciation and amortization	2,764	2,302
EBITDA	\$ 7,577	\$ 6,883
Stock compensation expense	2,081	2,280
Acquisition costs and impairment of long-lived and other non-current assets <sup>2</sup>	184	211
Non-GAAP Adjusted EBITDA	\$ 9,842	\$ 9,374

<sup>1</sup> Interest and other expenses (income), net excludes non-services pension and other postretirement benefit expenses.

## Liquidity and Capital Resources

Our operational cash needs primarily relate to working capital, including staffing costs, technology expenses, leases of real estate and equipment used in our operations, and capital used for inventory purchases, which we have funded through existing cash balances and cash generated from operations. From time to time, we may use our capital resources for other activities, such as contract start-up costs, joint ventures, share repurchases and acquisitions. As of December 31, 2022, we had \$76.2 million in cash and cash equivalents, which we believe is sufficient to meet the Company's anticipated cash needs for at least one year from the date of these financial statements.

### Capital Expenditures

Our capital expenditures consist primarily of capitalized software, warehouse equipment, computers and purchased software, office equipment, furniture and fixtures, and leasehold improvements. The timing and volume of such capital expenditures in the future will be affected by the addition of new sellers or buyers or expansion of existing seller or buyer relationships. We intend to fund those expenditures primarily from our existing cash balances and operating cash flows. Our capital expenditures for the three months ended December 31, 2022, and December 31, 2021, were \$1.2 million and \$2.0 million, respectively. This decrease was primarily driven by prior year growth in our distribution network facilities. As of December 31, 2022, we had no significant outstanding commitments for capital expenditures.

Our future capital requirements will depend on many factors including our rate of revenue growth, the timing and extent of spending to support development efforts, the expansion of sales and marketing activities, the development and deployment of new marketplaces, the introduction of new value-added services and the costs to establish additional distribution centers. We may seek to enter agreements with respect to potential investments in, or acquisitions of, complementary businesses, products or technologies, which could also require us to seek additional equity or debt financing. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Additional debt would result in increased interest expense and could result in covenants that would restrict our operations. There is no assurance that such financing, if required, will be available in amounts or on terms acceptable to us, if at all.

### Credit Agreement

The Company maintains a \$25.0 million Credit Agreement due March 31, 2024 (Credit Agreement). The Company may draw upon the Credit Agreement for general corporate purposes. Repayments of any borrowings under the Credit Agreement shall become available for redraw at any time by the Company. The interest rate on borrowings under the Credit Agreement is a variable rate per annum equal to the Daily Simple Secured Overnight Financing Rate (SOFR) in effect plus a margin ranging from 1.25% to 1.75%. Interest is payable monthly. During the three months ended December 31, 2022, the Company did not make any draws under the Credit Agreement. As of December 31, 2022, the Company had no outstanding indebtedness under the Credit Agreement and our borrowing availability was \$25.0 million.

The obligations under the Credit Agreement are unconditionally guaranteed by us and each of our existing and subsequently acquired or organized domestic subsidiaries and secured on a first priority basis by a security interest (subject to permitted liens) in substantially all assets owned by us, and each of our other domestic subsidiaries, subject to limited exceptions. The Credit Agreement contains certain financial and non-financial restrictive covenants including, among others, the requirement to maintain a minimum level of earnings before interest, income taxes, depreciation and amortization (EBITDA). The Credit Agreement contains a number of affirmative and restrictive covenants including limitations on mergers, consolidations and dissolutions, investments and acquisitions, indebtedness and liens, and dividends and other restricted payments. As of December 31, 2022, the Company was in full compliance with the terms and conditions of the Credit Agreement.

### Working Capital Management

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

The COVID-19 pandemic has caused the Company's GMV and revenues to fluctuate, and the Company initially implemented cost control measures to protect against the uncertainties created by the severe economic restrictions in its initial phases. From a cash flow perspective, the Company employed working capital management practices, primarily in the form of temporary extensions to vendor payment terms, and also experienced accumulation in its payables to sellers balance due to COVID-19 restrictions, which continue to be a factor in certain countries, causing some buyer delays in their ability to pick up purchased assets. The Company is prepared to reimplement these measures should it face conditions consistent with the initial phases of the COVID-19 pandemic.

We expect to continue to invest in enhancements to our e-commerce technology platform, marketplace capabilities and tools for data-driven product recommendations, omni-channel behavioral marketing, expanded analytics, and buyer/seller payment optimization.

We intend to indefinitely reinvest the earnings of our foreign subsidiaries outside the United States. As a result, we did not record a provision for deferred U.S. tax expense on the \$9.8 million of undistributed foreign earnings as of December 31, 2022. As of December 31, 2022, and September 30, 2022, \$18.0 million and \$20.3 million, respectively, of cash and cash equivalents was held outside of the U.S.

## *Other Uses of Capital Resources*

*Bid4Assets Earn-out Liability.* As of December 31, 2022, the remaining earn-out fair value is \$0 based upon actual performance through the final earn-out measurement period ending December 31, 2022.

*Share Repurchases.* From time to time, we have been authorized to repurchase issued and outstanding shares of our common stock under a share repurchase program approved by our Board of Directors. Share repurchases may be made through open market purchases, privately negotiated transactions or otherwise, at times and in such amounts as management deems appropriate. The timing and actual number of shares repurchased will depend on a variety of factors including price, corporate and regulatory requirements and other market conditions. The repurchase program may be discontinued or suspended at any time and will be funded using our available cash.

As of September 30, 2022, the Company had \$6.6 million remaining share repurchase authorization.

On December 6, 2022, the Company's Board of Directors authorized a new stock repurchase plan of up to \$8.4 million of the Company's outstanding shares of common stock through December 31, 2024.

The Company repurchased 531,819 shares for \$7.2 million during the three months ended December 31, 2022. As of December 31, 2022, the Company had \$7.8 million of remaining authorization to repurchase shares.

*Off-Balance Sheet Arrangements.* We do not have any transactions, agreements or other contractual arrangements that could be considered material off-balance sheet arrangements.

### ***Changes in Cash Flows: Three Months Ended December 31, 2022 Compared to the Three Months Ended December 31, 2021***

*Net cash provided by (used in) operating activities* was (\$10.7) million and \$1.9 million for the three months ended December 31, 2022, and 2021, respectively. The \$12.6 million decrease in cash provided by operating activities between periods was attributable to cash flows associated with accounts payable and payables to sellers which had a net decrease of \$18.7 million. While a decrease in the first fiscal quarter generally occurs due to seasonality in the timing of auction events and settlement payments, including lower transaction volumes around the holidays at the end of the quarter, the larger decrease towards the end of the three months ended December 31, 2022, was also affected by macroeconomic challenges slowing the supply of used vehicles.

*Net cash used in investing activities* was \$3.0 million and \$13.0 million for the three months ended December 31, 2022, and 2021, respectively. The \$10.0 million decrease in cash used in investing activities was driven by the prior year \$11.2 million in cash paid at closing to acquire Bid4Assets on November 1, 2021, net of cash acquired. See Note 3 - *Bid4Assets Acquisition* for further information. This decrease was offset by \$1.8 million in short-term investments purchased during the three months ended December 31, 2022.

*Net cash used in financing activities* was \$6.9 million and \$3.8 million for the three months ended December 31, 2022, and 2021, respectively. The \$3.1 million increase in cash used in financing activities was primarily driven by a \$4.2 million increase in share repurchases, offset by \$0.6 million in lower taxes paid in connection with the net settlement of stock compensation awards, and \$0.5 million of proceeds from the exercise of stock options.

### Item 3. Quantitative and Qualitative Disclosures About Market Risk

*Interest rate sensitivity.* Our investment policy requires us to invest funds in excess of current operating requirements. The principal objectives of our investment activities are to preserve principal, provide liquidity and maximize income consistent with minimizing risk of material loss. As of December 31, 2022, we hold cash and cash equivalents and short-term investments that are subject to varying interest rates based upon their maturities. A hypothetical 100 basis point decline in interest rates would impact our pre-tax earnings by less than \$1.0 million on an annualized basis.

As of December 31, 2022, we do not have any debt, however, should the Company draw on our Line of Credit in the future, such draw would incur interest as determined by the Daily Simple Secured Overnight Financing Rate (SOFR) in effect plus a margin ranging from 1.25% to 1.75%.

*Exchange rate sensitivity.* Because of the number of countries and currencies we operate in, movements in currency exchange rates may affect our results. We report our operating results and financial condition in U.S. dollars. Our U.S. operations earn revenues and incur expenses primarily in U.S. dollars.

Outside the United States, we generate revenues and incur expenses in both U.S. dollars and local currencies. Our primary foreign exchange exposures include British Pounds, Canadian Dollars, Chinese Yuan, Euros, and Hong Kong Dollars. When we translate the results and net assets of our international operations into U.S. dollars for financial reporting purposes, movements in exchange rates will affect our reported results. Volatile market conditions arising from ongoing macroeconomic conditions such as rising interest rates at federal banks and the Russia-Ukraine conflict, may result in significant changes in exchange rates, which could affect our results of operations expressed in U.S. dollars. A hypothetical 10% decrease in foreign exchange rates reduce our total expected revenues by approximately 1%. The potential impact on pre-tax earnings would be less as total expected expenses would also decrease.

### Item 4. Controls and Procedures.

#### Evaluation of Disclosure Controls and Procedures

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

As of December 31, 2022 we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective and were operating to provide reasonable assurance that the information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

#### Changes in Internal Control over Financial Reporting

During the three months ended December 31, 2022, no change occurred in our internal controls over financial reporting that materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

**Item 1. Legal Proceedings**

From time to time, we may become involved in litigation relating to claims arising in the ordinary course of the business. Information regarding the Company's legal proceedings can be found in Note 13 - *Legal Proceedings and Other Contingencies*, of the accompanying Notes to the condensed consolidated financial statements.

**Item 1A. Risk Factors**

*There have been no material changes from the risk factors disclosed in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022. In addition to the other information set forth in this report, you should carefully consider the factors set forth in Part I, "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended September 30, 2022, which could materially affect our business, financial condition or future results. The risks described in our Form 10-K are not the only risks we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results.*

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

**Unregistered Sales of Equity Securities**

None.

**Use of Proceeds**

Not applicable.

**Item 3. Defaults Upon Senior Securities**

Not applicable.

**Item 4. Mine Safety Disclosures**

Not applicable.

## Issuer Purchases of Equity Securities

The following table presents information about our repurchases of common stock during the three months ended December 31, 2022.

Period	Total Number of Shares Purchased <sup>1</sup>	Average Price Paid Per Share	Total Number of Shares Purchased as a Part of a Publicly Announced Program	Approximate Dollar Value of Shares that May Yet be Purchased Under the Programs (in million)
October 1, 2022, to October 31, 2022	—	\$ —	—	\$ 6.6
November 1, 2022, to November 30, 2022	—	\$ —	—	\$ 6.6
December 1, 2022, to December 31, 2022	531,819	\$ 13.53	531,819	\$ 7.8
<b>Total</b>	<u>531,819</u>		<u>531,819</u>	

From time to time, we have been authorized to repurchase issued and outstanding shares of our common stock under a share repurchase program approved by our Board of Directors. Share repurchases may be made through open market purchases, privately negotiated transactions or otherwise, at times and in such amounts as management deems appropriate. The timing and actual number of shares repurchased will depend on a variety of factors including price, corporate and regulatory requirements and other market conditions. Repurchase programs may be discontinued or suspended at any time and will be funded using our available cash.

On December 6, 2022, the Company's Board of Directors authorized a new stock repurchase plan of up to \$8.4 million of the Company's outstanding shares of common stock through December 31, 2024.

As of December 31, 2022, the Company had \$7.8 million of remaining authorization to repurchase shares.

### Item 5. Other Information

None

## Item 6. Exhibits

Exhibit No.	Description
3.1	<a href="#"><u>Fourth Amended and Restated Certificate of Incorporation, incorporated herein by reference to Exhibit 3.1 to Amendment No. 2 to the Company's Registration Statement on Form S-1 (Registration No. 333-129656), filed with the SEC on January 17, 2006.</u></a>
3.2	<a href="#"><u>Amended and Restated Bylaws, incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the SEC on August 5, 2022.</u></a>
10.1	<a href="#"><u>Form of Amended and Restated Executive Employment Agreement, incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, filed with the SEC on January 20, 2023.</u></a>
10.2	<a href="#"><u>Form of Change in Control Agreement, incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, filed with the SEC on January 20, 2023.</u></a>
10.3	<a href="#"><u>Form of Indemnification Agreement for directors and officers.</u></a>
10.4	<a href="#"><u>Form of Employee Agreement Regarding Confidentiality, Intellectual Property, and Competitive Activities.</u></a>
31.1	<a href="#"><u>Certification of Chief Executive Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934.</u></a>
31.2	<a href="#"><u>Certification of Chief Financial Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934.</u></a>
32.1	<a href="#"><u>Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
32.2	<a href="#"><u>Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
101	The following materials from the Registrant's Quarterly Report on Form 10-Q for the quarter ended December 31, 2022, formatted in Extensible Business Reporting Language (XBRL): (i) Condensed Consolidated Balance Sheets, (ii) Condensed Consolidated Statements of Operations, (iii) Condensed Consolidated Statements of Comprehensive Income, (iv) Condensed Consolidated Statement of Stockholders' Equity, (v) Condensed Consolidated Statements of Cash Flows, and (vi) Notes to the Unaudited Condensed Consolidated Financial Statements.
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

**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.

LIQUIDITY SERVICES, INC.  
(Registrant)

February 2, 2023

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

February 2, 2023

By: /s/ Jorge A. Celaya  
Jorge A. Celaya  
*Chief Financial Officer*



**INDEMNIFICATION AGREEMENT**

This Indemnification Agreement (this “**Agreement**”) is made as of the date of signature of the last party to sign by and between Liquidity Services, Inc., a Delaware corporation (the “**Company**”), and \_\_\_\_\_ (the “**Indemnitee**”).

WHEREAS, the Board of Directors has determined that the increasing difficulty in attracting and retaining qualified persons as directors and officers is detrimental to the best interests of the Company’s stockholders and that the Company should act to assure such persons that there will be adequate certainty of protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the Company; and

WHEREAS, the Company has adopted provisions in its Bylaws providing for mandatory indemnification of its officers and directors to the fullest extent permitted by applicable law, subject to certain limitations specified in the Bylaws, and the Company wishes to clarify and enhance the rights and obligations of the Company and the Indemnitee with respect to indemnification; and

WHEREAS, in order to induce and encourage highly experienced and capable persons such as the Indemnitee to serve and continue to serve as directors and officers of the Company and in other capacities with respect to the Company and its affiliates, and to otherwise promote the desirable end that such persons will resist what they consider unjustified lawsuits and claims made against them in connection with the good faith performance of their duties to the Company, with the knowledge that certain costs, judgments, liabilities and expenses incurred by them in their defense of such litigation are to be borne by the Company, the Board of Directors of the Company has determined that the following Agreement is reasonable and prudent to promote and ensure the best interests of the Company and its stockholders; and

NOW, THEREFORE, in consideration of the Indemnitee’s service as a director or executive officer of the Company, or service at the Company’s request as a director, officer, employee, or agent of other enterprises or entities, after the date hereof, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Service by Indemnitee. The Indemnitee will serve and/or continue to serve as a director or officer of the Company faithfully and to the best of the Indemnitee’s ability so long as the Indemnitee is duly elected or appointed and until such time as the Indemnitee is removed as permitted by law or tenders a resignation.

Section 2. Indemnification.

(a) General. The Company shall indemnify the Indemnitee (i) as provided in this Agreement and (ii) subject to the provisions of this Agreement, to the full extent permitted by applicable law and in a manner permitted by such law.

(b) Proceedings Other Than Proceedings by or in the Right of the Company. Except as provided in Section 4 hereof, the Indemnitee shall be entitled to the rights of indemnification provided in this Section 2(b) if, by reason of the Indemnitee's Corporate Status (as hereinafter defined), the Indemnitee is or was, or is or was threatened to be made, a party to or is or was otherwise involved in a Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company to procure a judgment in its favor. The Indemnitee shall be indemnified pursuant to and in accordance with this Section 2(b) against all Losses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf in connection with such a Proceeding or any claim, issue, or matter therein, but only if the Indemnitee acted in good faith and in a manner that the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe her, his or their conduct was unlawful.

(c) Proceedings by or in the Right of the Company. Except as provided in Section 4 hereof, the Indemnitee shall be entitled to the rights of indemnification provided in this Section 2(c) if, by reason of the Indemnitee's Corporate Status, the Indemnitee is or was, or is or was threatened to be made, a party to or is or was otherwise involved in a Proceeding brought by or in the right of the Company to procure a judgment in its favor. The Indemnitee shall be indemnified pursuant to and in accordance with this Section 2(c) against all Expenses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf in connection with such a Proceeding or any claim, issue, or matter therein, but only if the Indemnitee acted in good faith and in a manner that the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification for such Expenses shall be made in respect of any claim, issue, or matter in such Proceeding as to which the Indemnitee shall have been adjudged liable to the Company unless (and only to the extent that) the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery or such other court shall deem proper. Anything in this Agreement to the contrary notwithstanding, if the Indemnitee, by reason of the Indemnitee's Corporate Status, is or was, or is or was threatened to be made, a party to any Proceeding by or in the right of the Company to procure a judgment in its favor, then the Company shall not indemnify the Indemnitee for any judgment, fines, or amounts paid in settlement to the Company in connection with such Proceeding.

(d) Indemnification for Expenses if Indemnitee is Wholly or Partly Successful. Anything in this Agreement to the contrary notwithstanding, to the extent that the Indemnitee, by reason of the Indemnitee's Corporate Status, is or was, or is or was threatened to be made, a party to or is or was otherwise involved in any Proceeding and is successful, on the merits or otherwise, in defending such Proceeding (including dismissal without prejudice), the Indemnitee shall be indemnified to the maximum extent permitted by law against all Expenses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf in connection with the defense of such Proceeding. If the Indemnitee is not wholly successful in defending any such Proceeding but is successful, on the merits or otherwise, in defending one or more but less than all claims, issues, or matters in such proceeding (including dismissal without prejudice of certain claims), the Company shall indemnify the Indemnitee against all Expenses actually and reasonably incurred by the

Indemnitee or on the Indemnitee's behalf in defending each such successfully resolved claim, issue, or matter. To the extent the Indemnitee has been successful, on the merits or otherwise, in defending any Proceeding, or in defending any claim, issue, or matter therein, the Indemnitee shall be entitled to indemnification as provided in this Section 2(d) regardless of whether the Indemnitee met the standards of conduct set forth in Sections 2(b) and 2(c) hereof.

(e) Indemnification for Expenses as a Witness. Anything in this Agreement to the contrary notwithstanding, to the extent that the Indemnitee, by reason of the Indemnitee's Corporate Status, is or was, or is or was threatened to be made, a witness in any Proceeding to which the Indemnitee is not a party, the Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf in connection therewith. To the extent permitted by applicable law, the Indemnitee shall be entitled to indemnification for Expenses incurred in connection with being or threatened to be made a witness, as provided in this Section 2(e), regardless of whether the Indemnitee met the standards of conduct set forth in Sections 2(b) and 2(c) hereof.

(f) Partial Indemnification. If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Losses actually and reasonably incurred by the Indemnitee in a Proceeding, but not for the total amount thereof, the Company shall indemnify the Indemnitee for the portion of such Losses to which the Indemnitee is entitled.

Section 3. Advancement of Expenses. Anything in this Agreement to the contrary notwithstanding, but subject to Section 4 hereof, if, by reason of the Indemnitee's Corporate Status, the Indemnitee is or was, or is or was threatened to be made, a party to, or is or was otherwise involved in, or is or was, or is or was threatened to be made, a witness to any Proceeding (including, without limitation, a Proceeding brought by or in the right of the Company to procure a judgment in its favor), then the Company shall advance all Expenses actually and reasonably incurred by or on behalf of the Indemnitee in connection with any such Proceeding in advance of the final disposition of such Proceeding within thirty days after the receipt by the Company of a written request for such advance or advances from time to time. Such written request shall include or be accompanied by a statement or statements reasonably evidencing the Expenses incurred by or on behalf of the Indemnitee and for which advancement is requested, and shall include or be preceded or accompanied by an undertaking by or on behalf of the Indemnitee to repay any Expenses advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that the Indemnitee is not entitled to be indemnified against such Expenses under this Agreement or otherwise. Such undertaking shall be sufficient for purposes of this Section 3 if it is in substantially the form attached hereto as Exhibit A. Any advances and undertakings to repay pursuant to this Section 3 shall be unsecured and interest free. The Indemnitee shall be entitled to advancement of Expenses as provided in this Section 3 regardless of any determination by or on behalf of the Company that the Indemnitee has not met the standards of conduct set forth in Sections 2(b) and 2(c) hereof.

Section 4. Proceedings Against the Company. Anything in Section 2 or Section 3 hereof to the contrary notwithstanding, except as provided in Section 7(d) hereof, with respect to a Proceeding initiated against the Company by the Indemnitee (whether initiated by the Indemnitee

in or by reason of such person's capacity as an officer or director of the Company or in or by reason of any other capacity, including as an employee or agent of the Company or a director, officer, employee, or agent of Another Enterprise), the Company shall not be required to indemnify or to advance Expenses to the Indemnitee in connection with prosecuting such Proceeding (or any part thereof) or in defending any counterclaim, cross-claim, affirmative defense, or like claim of the Company in such Proceeding (or part thereof) unless such Proceeding was authorized by the Board of Directors of the Company. For purposes of this Section 4, a compulsory counterclaim by the Indemnitee against the Company in connection with a Proceeding initiated against the Indemnitee by the Company shall not be considered a Proceeding (or part thereof) initiated against the Company by the Indemnitee, and the Indemnitee shall have all rights of indemnification and advancement with respect to any such compulsory counterclaim in accordance with and subject to the terms of this Agreement.

Section 5. Procedure for Determination of Entitlement to Indemnification; Independent Counsel.

(a) To obtain indemnification under this Agreement, the Indemnitee shall submit to the Company a written request for indemnification, including therein or therewith, except to the extent previously provided to the Company in connection with a request or requests for advancement pursuant to Section 3 hereof, a statement or statements reasonably evidencing all Losses incurred or paid by or on behalf of the Indemnitee and for which indemnification is requested. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that the Indemnitee has requested indemnification.

(b) Upon written request by the Indemnitee for indemnification pursuant to the first sentence of Section 5(a) hereof, if required by applicable law and to the extent not otherwise provided pursuant to the terms of this Agreement, a determination with respect to the Indemnitee's entitlement to indemnification shall be made in the specific case as follows: (i) if a Change in Control (as hereinafter defined) shall have occurred and if so requested in writing by the Indemnitee, by Independent Counsel (as hereinafter defined) in a written opinion to the Board of Directors; or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors (as hereinafter defined), even though less than a quorum of the Board of Directors, or (B) by a committee of Disinterested Directors designated by majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, or (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board of Directors. Notice in writing of any determination as to the Indemnitee's entitlement to indemnification shall be delivered to the Indemnitee promptly after such determination is made, and if such determination of entitlement to indemnification has been made by Independent Counsel in a written opinion to the Board of Directors, then such notice shall be accompanied by a copy of such written opinion. If it is determined that the Indemnitee is entitled to indemnification, then payment to the Indemnitee of all amounts to which the Indemnitee is determined to be entitled shall be made within ten (10) days after such determination. If it is determined that the Indemnitee is not entitled to indemnification, then the written notice to the Indemnitee (or, if such determination has been made by Independent Counsel in a written opinion, the copy of such written opinion delivered to the Indemnitee) shall disclose with particularity the evidence upon which such determination is based. The Indemnitee shall cooperate with the person,

persons, or entity making the determination with respect to the Indemnitee's entitlement to indemnification, including providing to such person, persons, or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to the Indemnitee and reasonably necessary to determine whether and to what extent the Indemnitee is entitled to indemnification.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 5(b) hereof, the Independent Counsel shall be selected as provided in this Section 5(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board of Directors, and the Company shall give written notice to the Indemnitee advising the Indemnitee of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by the Indemnitee (unless the Indemnitee shall request that such selection be made by the Board of Directors, in which event the preceding sentence shall apply), and the Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, the Indemnitee or the Company, as the case may be, may, within 10 days after such written notice of selection has been given, deliver to the Company or to the Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the law firm or person so selected does not meet the requirements of "Independent Counsel" as defined in Section 22 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the law firm or person so selected may not serve as Independent Counsel unless and until such objection is withdrawn or the Court of Chancery of the State of Delaware or another court of competent jurisdiction in the State of Delaware has determined that such objection is without merit. If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 5(b) hereof and, following the expiration of 20 days after submission by the Indemnitee of a written request for indemnification pursuant to Section 5(a) hereof, Independent Counsel shall not have been selected, or an objection thereto has been made and not withdrawn, then either the Company or the Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction in the State of Delaware for resolution of any objection that shall have been made by the Company or the Indemnitee to the other's selection of Independent Counsel and/or for appointment as Independent Counsel of a law firm or person selected by such court (or selected by such person as the court shall designate), and the law firm or person with respect to whom all objections are so resolved or the law firm or person so appointed shall act as Independent Counsel under Section 5(b) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 7(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing). If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 5(b) hereof, then the Company agrees to pay the reasonable fees and expenses of such Independent Counsel.

Section 6. Burden of Proof; Defenses; and Presumptions.

(a) In any judicial proceeding or arbitration pursuant to Section 7 hereof brought by the Indemnitee to enforce rights to indemnification or to an advancement of expenses hereunder, or in

any action, suit, or proceeding brought by the Company to recover an advancement of expenses (whether pursuant to the terms of an undertaking or otherwise), the burden shall be on the Company to prove that the Indemnitee is not entitled to be indemnified, or to such an advancement of expenses, as the case may be.

(b) It shall be a defense in any judicial proceeding or arbitration pursuant to Section 7 hereof to enforce rights to indemnification under Section 2(b) or Section 2(c) hereof (but not in any judicial proceeding or arbitration pursuant to Section 7 hereof to enforce a right to an advancement of expenses under Section 3 hereof) that the Indemnitee has not met the standards of conduct set forth in Section 2(b) or Section 2(c), as the case may be, but the burden of proving such defense shall be on the Company. With respect to any judicial proceeding or arbitration pursuant to Section 7 hereof brought by the Indemnitee to enforce a right to indemnification hereunder, or any action, suit, or proceeding brought by the Company to recover an advancement of expenses (whether pursuant to the terms of an undertaking or otherwise), neither (i) the failure of the Company (including by its directors or Independent Counsel) to have made a determination prior to the commencement of such action, suit, proceeding, or arbitration that indemnification is proper in the circumstances because the Indemnitee has met the applicable standards of conduct, nor (ii) an actual determination by the Company (including by its directors or Independent Counsel) that the Indemnitee has not met such applicable standards of conduct, shall create a presumption that the Indemnitee has not met the applicable standards of conduct or, in the case of a judicial proceeding or arbitration pursuant to Section 7 hereof brought by the Indemnitee seeking to enforce a right to indemnification, be a defense to such proceeding or arbitration.

(c) The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, adversely affect the right of the Indemnitee to indemnification hereunder or create a presumption that the Indemnitee did not act in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal Proceeding, that the Indemnitee had reasonable cause to believe that her, his or their conduct was unlawful.

(d) The knowledge and/or actions, or failure to act, of any other director, officer, agent, or employee of the Company or of Another Enterprise shall not be imputed to the Indemnitee for purposes of determining the Indemnitee's right to indemnification under this Agreement.

#### Section 7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 5 of this Agreement that the Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 3 of this Agreement, (iii) if the determination of entitlement to indemnification is not to be made by Independent Counsel pursuant to Section 5(b) hereof, no determination of entitlement to indemnification shall have been made pursuant to Section 5(b) of this Agreement within 60 days after receipt by the Company of the Indemnitee's written request for indemnification, (iv) if the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 5(b) hereof, no determination of entitlement to indemnification shall have been made pursuant to Section 5(b) hereof within 80 days after receipt by the Company of the Indemnitee's written request for indemnification, unless

an objection to the selection of such Independent Counsel has been made and substantiated and not withdrawn, in which case the applicable time period shall be 70 days after the Court of Chancery of the State of Delaware or another court of competent jurisdiction in the State of Delaware (or such person appointed by such court to make such determination) has determined or appointed the person to act as Independent Counsel pursuant to Section 5(b) hereof, (v) payment of indemnification is not made pursuant to Section 2(d) or Section 2(e) of this Agreement within twenty (20) days after receipt by the Company of a written request therefor, or (vi) payment of indemnification pursuant to Section 2(b) or Section 2(c) of this Agreement is not made within ten (10) days after a determination has been made pursuant to Section 5(b) that the Indemnitee is entitled to indemnification, then the Indemnitee shall be entitled to seek an adjudication by the Court of Chancery of the State of Delaware of the Indemnitee's entitlement to such indemnification or advancement of Expenses. Alternatively, if the foregoing conditions have been satisfied, the Indemnitee, at her, his or their option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which the Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a); provided, however, that the foregoing clause shall not apply in respect of a proceeding brought by the Indemnitee to enforce her, his or their rights to indemnification under Section 2(d) of this Agreement.

(b) In the event that a determination shall have been made pursuant to Section 5(b) of this Agreement that the Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 7 shall be conducted in all respects as a *de novo* trial, or arbitration, on the merits and the Indemnitee shall not be prejudiced by reason of that adverse determination.

(c) If a determination shall have been made pursuant to Section 5(b) of this Agreement that the Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 7, absent (i) a misstatement or misrepresentation by the Indemnitee (or anyone acting on the Indemnitee's behalf) of a material fact, or an omission of a material fact necessary to make the Indemnitee's statement (or statements of persons acting on behalf of the Indemnitee) not materially misleading, in connection with the request for indemnification or in connection with the provision of information or documentation pursuant to the last sentence of Section 5(b), or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that the Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of or an award in arbitration to enforce the Indemnitee's rights under, or to recover damages for breach of, this Agreement, then the Indemnitee shall be entitled to recover from the Company, and shall be indemnified by the Company against, any and all Expenses actually and reasonably incurred by or on behalf of such Indemnitee in such judicial adjudication or arbitration, but only if (and only to the extent) the Indemnitee prevails therein. If it shall be determined in said judicial adjudication or arbitration that the Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the expenses incurred by the Indemnitee in connection with such judicial adjudication or arbitration shall be appropriately prorated.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding, and enforceable and the Company shall stipulate in the court in which any such judicial proceeding is pending or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

Section 8. Non-Exclusivity. Except to the extent expressly provided herein, and only to such extent, the rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which the Indemnitee may at any time be entitled under applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders, a resolution of directors, or otherwise, both as to action in or by reason of the Indemnitee's Corporate Status and as to action in or by reason of any other capacity of the Indemnitee while serving as a director or officer of the Company. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. Anything in this Section 8 to the contrary notwithstanding, to the extent the time periods specified in Section 3 and Section 7(a) hereof with respect to the time at which the Indemnitee shall be entitled to seek an adjudication or an award in arbitration as to the Indemnitee's entitlement to indemnification or advancement differ from similar time periods specified in the Company's Certificate of Incorporation or Bylaws, the time periods set forth in Section 3 and Section 7(a) hereof shall control and be binding on the Indemnitee and the Company. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

Section 9. Insurance; Subrogation; Other Sources of Payment.

(a) The Company hereby covenants and agrees that, so long as the Indemnitee continues to serve as a director or officer of the Company, the Company shall use reasonable efforts to maintain in full force and effect its current policy or policies of directors' and officers' liability insurance for the benefit of the Indemnitee; provided however, that the Company may substitute therefor replacement or substitute policies of at least the same coverage and amounts, with financially sound and responsible insurers, containing terms and conditions that are not materially less advantageous in the aggregate to the Indemnitee. In addition, for a period of three years after the Termination Date (as hereinafter defined), the Company agrees to use reasonable efforts either (i) to cause to be obtained "tail" insurance policies with a claims period of at least three years from the Termination Date with coverage terms at least as favorable (including in amount and scope) as the Company's existing policy or policies of directors' and officers' liability insurance and insuring against claims arising from actions taken or omitted by the Indemnitee, or facts or events that occurred, on or before the Termination Date or (ii) to maintain in effect its then current policy or policies of directors' and officers' liability insurance for the benefit of the Indemnitee with respect to claims arising from actions taken or omitted by the Indemnitee, or facts or events that occurred, on or before the Termination Date; provided, however, that the Company may substitute therefor replacement or substitute policies of at least the same coverage and amounts, with financially sound and responsible insurers, containing terms and conditions that are not materially less advantageous in the aggregate to the Indemnitee. Anything herein to the contrary notwithstanding, with respect to the obligations of the Company to maintain directors' and



officers' liability insurance as set forth in the first and second sentences of this Section 9(a), the Company shall not be obligated to make annual premium payments for any such insurance to the extent such premiums exceed 200% of the premiums currently being paid by the Company for such insurance or reserved pursuant to a self-insurance program and if such premiums for such insurance would at any time exceed 200% of such current premium or reserves, then the Company shall cause to be maintained policies of insurance which, in good faith determination of the Board of Directors, provide the maximum coverage available at an annual premium equal to 200% of such current premium or reserves. The provision of directors' and officers' liability insurance as provided in this Section 9(a) shall be in addition to the Company's obligations under Sections 2 and 3 hereof and shall not be deemed to be in satisfaction of those obligations.

(b) In the event of any payment to or on behalf of the Indemnitee under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(c) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is otherwise provided hereunder) if and to the extent that the Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement, or otherwise.

(d) The Company's obligation to indemnify or advance Expenses hereunder to the Indemnitee, in connection with or by reason of Indemnitee's service at the request of the Company as a director, officer, employee, agent, or fiduciary of Another Enterprise, shall be reduced by any amount that the Indemnitee has actually received as indemnification or advancement of Expenses from such Other Enterprise with respect to the Proceeding for which indemnification or advancement of Expenses is sought.

Section 10. Settlements. Anything in this Agreement or the Company's Certificate of Incorporation or Bylaws to the contrary notwithstanding, the Company shall have no obligation to indemnify the Indemnitee for any amounts paid by or on behalf of the Indemnitee in settlement of any Proceeding, unless the Company has consented in writing to such settlement, which consent shall not be unreasonably withheld. The Company shall not settle any claim in any manner that would impose any fine or any obligation on the Indemnitee without the Indemnitee's prior written consent, which consent shall not be unreasonably withheld.

Section 11. Survival of Rights; Binding Effect; Successors and Assigns.

(a) The indemnification and advancement of Expenses and other rights provided by, or granted pursuant to, this Agreement shall continue during the period that the Indemnitee is a director or officer of the Company and shall continue after the Termination Date with respect to claims arising from any action taken or omitted by the Indemnitee, or facts or events that occurred, on or before the Termination Date.

(b) This Agreement shall be binding upon the Indemnitee and upon the Company and its successors and assigns, and shall inure to the benefit of the Indemnitee, the Indemnitee's heirs, personal representatives, executors, administrators, and assigns and to the benefit of the Company and its successors and assigns.

(c) The Company further agrees that in the event the Company or any of its successors or assigns (i) consolidates with or merges into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys all or substantially all of its properties and assets to any corporation or entity, then, and in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of the Company as a result of such transaction assume the obligations of the Company set forth in this Agreement, including, without limitations, the requirements with respect to directors' and officers' liability insurance set forth in Section 9.

Section 12. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever: (a) the validity, legality, and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that is not itself invalid, illegal, or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that it not itself invalid, illegal, or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 13. Acknowledgement. The Company expressly acknowledges, confirms, and agrees that it has entered into this Agreement and has assumed the obligations imposed on the Company hereby in order to induce the Indemnitee to serve or continue to serve as a director or officer of the Company, and the Company acknowledges that the Indemnitee is relying upon this Agreement in serving and continuing to serve in such capacity.

Section 14. Notice by Indemnitee. The Indemnitee agrees to notify the Company promptly and in writing upon being served with any summons, citation, subpoena, complaint, petition, indictment, information, or other document relating to the commencement or threatened commencement of any Proceeding or matter that may be subject to indemnification or advancement of Expenses covered hereunder. The failure of the Indemnitee to so notify the Company shall not relieve the Company of any obligation that it may have to the Indemnitee under this Agreement or otherwise, except to the extent the Company is materially prejudiced by such failure.

Section 15. Notices. Any notices, requests, demands, or other communications provided for by this Agreement shall be sufficient if in writing and if sent by registered or certified mail to the Employee at the last address he or she has filed in writing with the Company or, in the case of the Company, at its principal offices.

Section 16. Counterparts and Electronic Signature. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

Section 17. Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written, and implied, between the parties hereto with respect to the subject matter hereof.

Section 19. Modification and Waiver.

(a) No amendment, modification, supplementation, or repeal of this Agreement or any provision hereof shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

(b) No amendment, modification, supplementation, or repeal of this Agreement or of any provision hereof shall limit or restrict any rights of the Indemnitee under this Agreement in respect of any action taken or omitted by the Indemnitee in or by reason of the Indemnitee's Corporate Status prior to such amendment, modification, supplementation, or repeal.

Section 20. Governing Law; Submission to Jurisdiction; Service of Process.

(a) This Agreement and the legal relations among the parties with respect to the matters addressed hereby shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.

(b) Except with respect to any arbitration commenced by the Indemnitee pursuant to Section 7(a) of this Agreement and except to the extent permitted by Section 2(c) hereof with respect to a determination by a court in which an underlying Proceeding was brought that the Indemnitee is entitled to indemnification of Expenses notwithstanding an adjudication of liability to the Company, the Company and the Indemnitee each hereby irrevocably and unconditionally (i) agrees and consents to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action, suit, or proceeding that arises out of or relates to this Agreement and agrees that any such action instituted under this Agreement shall be brought only in the Court of Chancery of the State of Delaware (or in any other state court of the State of Delaware if the Court of Chancery does not have subject matter jurisdiction over such action), and not in any other state or federal

court in the United States of America or any court or tribunal in any other country; (ii) consents to submit to the exclusive jurisdiction of the courts of the State of Delaware for purposes of any action or proceeding arising out of or in connection with this Agreement; (iii) waives any objection to the laying of venue of any such action or proceeding in the courts of the State of Delaware; and (iv) waives, and agrees not to plead or to make, any claim that any such action or proceeding brought in the courts of the State of Delaware has been brought in an improper or otherwise inconvenient forum.

(c) Each of the Company and the Indemnitee hereby consents to service of any summons and complaint and any other process that may be served in any action, suit, or proceeding arising out of or relating to this Agreement in any court of the State of Delaware by mailing by certified or registered mail, with postage prepaid, copies of such process to such party at its address for receiving notice pursuant to Section 15 hereof. Nothing herein shall preclude service of process by any other means permitted by applicable law.

Section 21. Nature of Agreement. This Agreement shall not be deemed an employment contract between the Company and the Indemnitee, and, if Indemnitee is an officer or employee of the Company, Indemnitee specifically acknowledges that Indemnitee may be discharged as an officer or employee of the Company at any time for any reason, with or without cause, and with or without severance compensation, except as may be otherwise provided in a separate written contract between the Company and the Indemnitee.

Section 22. Definitions. For purposes of this Agreement:

(a) “Another Enterprise” and “Other Enterprise” refer to a corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, or any other form of enterprise, other than the Company.

(b) “Change in Control” means, and shall be deemed to have occurred if, (i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company acting in such capacity or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, becomes the “beneficial owner” (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total voting power represented by the Company’s then outstanding voting stock, (ii) during any period of two (2) consecutive years, individuals who at the beginning of such period constitute the Board of Directors of the Company and any new director whose election by the Board of Directors or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation other than a merger or consolidation that would result in the voting stock of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting stock of the surviving entity) at least fifty percent (50%) of the total voting power represented by the voting

stock of the Company or such surviving entity outstanding immediately after such merger or consolidation, or (iv) the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company (in one transaction or a series of related transactions) of all or substantially all of the Company's assets.

(c) "Corporate Status" describes the Indemnitee's status as a present or former director or officer of the Company or the Indemnitee's status, at any time while serving as a director or officer of the Company, as a director, officer, employee, agent, or fiduciary of Another Enterprise to the extent the Indemnitee is or was serving in such capacity with respect to such Other Enterprise at the request of Company.

(d) "Expenses" includes, without limitation, attorneys' fees; retainers; disbursements of counsel; court costs; filing fees; transcript costs; fees and expenses of experts; fees and expenses of witnesses; fees and expenses of accountants and other consultants (excluding public relations consultants unless approved in advance by the Company); travel expenses; duplicating and imaging costs; printing and binding costs; telephone charges; facsimile transmission charges; computer legal research costs; postage; delivery service fees; fees and expenses of third-party vendors; the premium, security for, and other costs associated with any bond (including supersedeas or appeal bonds, injunction bonds, cost bonds, appraisal bonds or their equivalents), in each case incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding (including, without limitation, any judicial or arbitration Proceeding brought to enforce the Indemnitee's rights under, or to recover damages for breach of, this Agreement), as well as all other "expenses" within the meaning of that term as used in Section 145 of the General Corporation Law of the State of Delaware and all other disbursements or expenses of types customarily and reasonably incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, actions, suits, or proceedings similar to or of the same type as the Proceeding with respect to which such disbursements or expenses were incurred; but, notwithstanding anything in the foregoing to the contrary, "Expenses" shall not include amounts of judgments, penalties, or fines actually levied against the Indemnitee in connection with any Proceeding.

(e) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by the Indemnitee.

(f) "Independent Counsel" means a law firm, or a person admitted to practice law in any State of the United States, that is experienced in matters of corporation law and neither presently is, nor in the past three years has been, retained to represent: (i) the Company or the Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnities under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any law firm or person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or the Indemnitee in an action to determine the Indemnitee's rights under this Agreement.

(g) “Losses” means all Expenses, judgments, penalties, fines, and amounts paid in settlement in connection with a Proceeding.

(h) “Proceeding” means any threatened, pending, or completed action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, administrative hearing, or any other threatened, pending, or completed proceeding, whether brought by or in the right of the Company or otherwise, and whether civil, criminal, administrative, or investigative.

(i) “Termination Date” shall mean the date on which the Indemnitee is no longer a director or officer of the Company.

(j) References herein to “fines” shall include any excise tax assessed with respect to any employee benefit plan.

(k) References herein to a director of Another Enterprise or a director of an Other Enterprise shall include, in the case of any entity that is not managed by a board of directors, such other position, such as manager or trustee or member of the governing body of such entity, that entails responsibility for the management and direction of such entity’s affairs, including, without limitation, the general partner of any partnership (general or limited) and the manager or managing member of any limited liability company.

(l) References herein to serving at the request of the Company as a director, officer, employee, agent, or fiduciary of Another Enterprise shall include any service as a director, officer, employee, or agent of the Company that imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan of the Company or any of its affiliates, other than solely as a participant or beneficiary of such a plan; and (ii) if the Indemnitee has acted in good faith and in a manner such the Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, the Indemnitee shall be deemed to have acted in a manner not opposed to the best interests of the Company for purposes of this Agreement.

IN WITNESS WHEREOF, the Company and the Indemnitee have executed this Agreement on and as of the day and year first above written.

**LIQUIDITY SERVICES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**INDEMNITEE**

\_\_\_\_\_

Exhibit A to Indemnification Agreement – Form of Undertaking

UNDERTAKING

I, \_\_\_\_\_, agree to reimburse Liquidity Services, Inc. (the “Company”) for all expenses paid to me or on my behalf by the Company in connection with my involvement in **[name or description of proceeding or proceedings]**, in the event, and to the extent, that it shall ultimately be determined that I am not entitled to be indemnified by the Company for such expenses.

Signature \_\_\_\_\_

Typed Name \_\_\_\_\_

\_\_\_\_\_ ) ss:

Before me \_\_\_\_\_, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and who, after being duly sworn, stated that the contents of said instrument is to the best of her, his or their knowledge and belief true and correct and who acknowledged that he/she executed the same for the purpose and consideration therein expressed.

GIVEN under my hand and official seal at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_



**EMPLOYEE AGREEMENT REGARDING CONFIDENTIALITY,  
INTELLECTUAL PROPERTY, AND COMPETITIVE ACTIVITIES**

THIS AGREEMENT (this “**Agreement**” or the “**Employee Agreement**”) is entered into as of the Effective Date set forth on the signature page hereof between Liquidity Services, Inc., a Delaware corporation, and its subsidiaries and affiliates (collectively, the “**Company**”) and the undersigned employee of the Company (“**I**”, “**me**”, or “**Employee**”). I recognize and acknowledge the Company would not have retained my services as an employee, and the Company would not have allowed me access to Confidential Information (as defined below), but for my commitment to the agreements and covenants in this Agreement. Accordingly, in consideration of my retention by the Company, the sufficiency of which I expressly acknowledge, the Company and I, intending to be legally bound, agree as follows:

1. **CONFIDENTIAL MATERIALS AND INFORMATION.**

a. **Confidential Information.** The following materials and information, whether having existed, now existing, or to be developed or created during the term of my employment by Company (collectively “**Confidential Information**”) are covered by this Agreement.

i. **Software.** All information relating to existing software products, whether owned or licensed by Company, and software in various stages of research and development which are not generally known to the public or within the industry or trade areas in which Company competes (such as know-how, design specifications, algorithms, technical formulas, engineering data, benchmark test results, methodologies, procedures, techniques, and information processing processes) and the physical embodiments of such information (such as drawings, specification sheets, design notes, source code, object code, load modules, schematics, flow charts, logic diagrams, procedural diagrams, coding sheets, work sheets, documentation, annotations, printouts, studies, manuals, proposals and any other written or machine-readable manuals, proposals and any other written or machine readable expressions of such information as are fixed in any tangible media).

ii. **Marketing Plans and Customer Lists.** All information not generally known to the public that pertains to Company’s marketing plans and strategies; forecasts and projections; marketing practices, procedures, and policies; financial data; discounts; margins; costs; credit terms; pricing practices, procedures, and policies; goals and objectives; quoting practices, procedures and policies; and customer data, including customer lists, contracts, representatives, requirements and needs, specifications, data provided by, or about, prospective, existing, or past customers, and contract

terms applicable to such customers, and the physical embodiments of such information (such as license agreements, customer lists, print-outs, databases, marketing plans, marketing reports, strategic business plans, marketing analyses and management reports, seminar and class attendee rosters, trade show or exhibit attendee listings, listings of potential customers and leads, and any other written or machine-readable expressions of such information as are fixed in any tangible media).

iii. **Business Procedures**. All information concerning, or relating to, the way the Company conducts its business, which is not generally known to the public (such as internal business procedures, controls, plans, licensing techniques and practices, supplier, subcontractor, and prime contractor names and contracts, and other vendor information, computer system passwords and other computer security controls, financial information, distributor information, information supplied by clients and customers of the Company, and employee data) and the physical embodiments of such information (such as check lists, samples, services and operational manuals, contracts, proposals, print-outs, correspondence, forms, listings, ledgers, financial statements, financial reports, financial and operational analyses, financial and operational studies, management reports of every kind, databases, employment records pertaining to employees other than myself, and any other written, or machine-readable, expressions of such information as are fixed in any tangible media).

iv. **Other Products and Services**. All information relating to consulting, training, and other proprietary products or services, whether existing, or in various stages of research and development, that are not generally known to the public, or within the industry or trade areas in which the Company competes (such as know-how, specifications, technical data, engineering data, processes, techniques, methodologies, and strategies) and the physical embodiments of such information (such as drawings, schematics, specification sheets, instructor manuals, course materials, training aids, video cassettes, transparencies, slides, taped recordings of presentations, proposals, printouts, studies, contracts, maintenance manuals, documentation, and any other written, or machine-readable, expressions of such information as are fixed in any tangible media).

v. **Information Not Generally Known**. Any information belonging to the Company, related to the Company, or related to the Company's industry or trade areas that is generally not known to the public, or within the industry or trade areas in which the Company competes, that gives the Company any advantage over its

competitors, and the physical embodiments of such information in any tangible form, whether written, or machine-readable.

b. **General Knowledge.** The general skills, knowledge and experience gained during my employment with the Company, and information publicly available or generally known within the industry or trade areas in which the Company competes, is not considered Confidential Information. In addition, upon termination of my employment with the Company, I shall not, subject to the provisions of Sections 3.1, 3.2 and 3.3 below, be restricted from working with a person, or entity that has independently developed information, or materials, similar to Confidential Information, as long as I comply with my continuing obligations under this Agreement.

c. **Employee Obligations as to Confidential Information.** During my employment with the Company, I acknowledge and agree I will have access to Confidential Information, and will occupy a position of trust and confidence with respect to the Company's affairs and business. I agree to take the following steps to preserve the confidential and proprietary nature of Confidential Information and materials.

i. **Non-Disclosure.** During, and after, my employment with the Company, I will not use, disclose, or transfer any Confidential Information, other than as authorized by the Company and within the scope of my duties with the Company, and I will not, in any way other than in the Company's business, use Confidential Information, including information or materials received by the Company from others, and intended by the Company to be kept in confidence by its recipients. I understand I am not allowed to sell, license or otherwise exploit any products (including software in any form) which embody, or otherwise exploit, in whole, or in part, any Confidential Information.

ii. **Disclosure Prevention.** I will take all reasonable precautions to prevent the inadvertent or accidental disclosure of Confidential Information. If I acquire access to information with uncertain confidentiality, I agree to treat such information as Confidential Information until I am informed otherwise, in writing, by an authorized representative of the Company.

iii. **Removal of Confidential Information.** Except for use in the Company's business, I will not remove from the Company's premises, or make copies of Confidential Information.

iv. **Return All Confidential Information.** Upon the request of the Company, at any time, I will return to the

Company all Confidential Information, including any copies of Confidential Information. After my termination of employment for any reason, I agree not to retain Confidential Information. I agree to deliver, and sign, the “Termination Certificate” attached hereto as Exhibit A.

v. **Computer Security.** During my employment with the Company, I agree only to use the Company computer resources (both on, and off, the Company’s premises) for which I have been granted access, and then only to the extent authorized. I agree to comply with the Company’s policies and procedures concerning computer security.

vi. **E-Mail.** I understand the Company maintains an electronic mail system and related facilities for the purpose of business communications. I acknowledge said system and related facilities, as well as all electronic communications transmitted thereon, are the Company property, and the Company retains the right to review, at any time, such electronic mail communications, with or without notice.

vii. **Software.** I agree that no software shall be copied for the Company in connection with performing my work for the Company, unless the Company has obtained a license permitting such copying. I agree to indemnify, defend, and hold the Company harmless from, and against, any claims, damages, costs, liabilities, and expenses, including reasonable attorney’s fees, if the Company incurs any claims or losses as a result of my unauthorized copying of software.

viii. **Notice of Disclosure.** Subject to the protections of Section 4.4, I agree, if I receive a subpoena compelling me, or I am otherwise required by law, to provide information to any person concerning the activities of the Company, or my activities in connection with the Company’s business, I will immediately notify the Company of such subpoena or requirement and deliver to the Company a copy of such subpoena or other notice of the requirement, unless such notice would be, in the opinion of a recognized legal expert on such matters, prohibited by law.

## 2. **IDEAS AND INVENTIONS.**

a. **Ownership.** I agree all writings, including without limitation, software program code, logic diagrams, flow charts, decision charts, drawings, procedural diagrams, coding sheets, designs, specifications, notes, improvements, discoveries, inventions, ideas, documentation manuals

of any kind, or other work developed by me (“**Ideas, Inventions, and Writings**”) in the course of my performance of any services for the Company shall be works made for hire, and shall be the exclusive property of the Company to use, publish, and license in its discretion (unless such works are in the public domain under the Federal Procurement Regulations). The Company shall own all of the rights, including, without limitation, patents and copyrights, in, arising or derived from, or related to Ideas, Inventions, and Writings. If such material may not, by operation of law, or otherwise, be a work made for hire, I further agree to convey, assign, and transfer to the Company all of my rights, title, and interest in such materials. Without the express written consent of the Company, I agree not to make any use of Ideas, Inventions, and Writings for any purpose, other than purposes directly related to the business of the Company. I agree to promptly and routinely disclose to the Company all Ideas, Inventions, and Writings covered by this Agreement, and I will, upon request, execute specific assignments, and take any action, necessary to enable the Company to secure patents, copyrights, or otherwise secure its proprietary rights in such material. I further agree my obligation to execute, or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue after the termination of this Agreement. If the Company is unable, because of my mental or physical incapacity, or for any other reason, to secure my signature to apply, or to pursue any application, for any United States or foreign patents or copyright registrations covering Ideas, Inventions and Writings assigned to the Company as above, I irrevocably designate, and appoint, the Company, and its duly authorized officers and agents, as my agent and attorney in fact, to act for, and on my behalf, and to execute and file, any such applications, and to do all other lawfully permitted acts to further the prosecution and issuance of letters, patents, or copyright registrations thereon, with the same legal force and effect as if executed by me.

b. **Disclosure of Prior Ideas, Inventions, and Writings**. I understand Section 2.1 does not apply to any material appearing to come within the definition of Ideas, Inventions, and Writings, but developed by me prior to my work for the Company, or otherwise unrelated to, and outside the scope of my performance of services for the Company. Attached hereto as Exhibit B is a list describing all such material, or other information, to which I claim ownership and/or exclusive right. I acknowledge, and agree, I shall be presumed not to have intellectual property rights in any such material that I fail to so identify.

c. **Restrictions on Use**. I agree that material not within the scope of Section 2.1 and material identified pursuant to Section 2.2, will not be used in the course of my performance of any services for the Company. Unless otherwise agreed to in writing, by an authorized officer of the Company, should such material be used, it shall be deemed to be within the scope of Section 2.1.

d. **Moral Rights.** I understand the term “moral rights” means any rights of paternity or integrity, including any right to claim authorship of a copyrightable work, to object to a modification of such copyrightable work, and any similar right existing under the judicial or statutory law of any country in the world, or under any treaty, regardless of whether such right is denominated, or generally referred to, as a “moral right.” I forever waive, and agree never to assert, any moral rights I may have in any copyrightable work assigned to the Company as a result of Section 2.1, even after termination of my employment.

3. **NON-COMPETITION AND NON-SOLICITATION.**

a. **Non-Competition.** I acknowledge and agree my services will be of special, unique and extraordinary value to the Company and the Company’s ability to accomplish its purposes, pursue its business plans, and compete in the marketplace substantially depends on my skills and services. Therefore, I covenant and agree, at no time during my employment with Company, and for 12 months following my separation from Company for any reason (the “Non-Compete Period”), will I directly, or indirectly, without the prior written consent of the Company, become interested or engaged, directly or indirectly, as a shareholder, bondholder, creditor, officer, director, partner, agent, contractor with, employer or representative of, or in any manner associated with, or give financial technical or other assistance to, any person, firm, corporation, or any other entity in competition with the Company within any geographic area in which I performed services on behalf of the Company during the Non-Compete Period, provided, however, this provision shall not preclude me from holding passive minority stakes of less than 1% in public equities or debt. For purposes of this provision, I acknowledge and agree, the Company regularly conducts business, solicits customers and otherwise competes in (1) the operation of e-commerce marketplace solutions to manage, market, sell and value surplus assets (including, without limitation, capital assets, equipment, inventory, merchandise, real estate, and vehicles); or (2) the provision of services and technology-enabled services relating to the advertising, asset management, auction, disposition, financing, inspection, inventory management, listing for sale or auction, processing, logistics, sale or transportation of such surplus assets.

b. **Non-Solicitation of Employees.** Both during my employment, and for one year immediately following the termination of my employment with the Company, for any reason, whether voluntary or involuntary, I shall not, directly or indirectly through another person, firm, corporation, association, or entity, trade on my good will by (i) soliciting any Company employee, consultant, or contractor for employment, or other work-related engagement, by me or by any other person, firm, corporation, association, or entity; (ii) induce, or attempt to induce, any Company

employee, consultant, or contractor to terminate her, his or their employment or other relationship with the Company for any reason; (iii) interfere with the Company's relationship with any employee, consultant, or contractor; or (iv) solicit for employment, or hire, any person who was employed by the Company at any time during the six (6) months preceding the time of such proposed hiring.

c. **Non-Solicitation of Clients**. Both during my employment, and for one year immediately following the termination of my employment with the Company for any reason, whether voluntary, or involuntary, I shall not, directly, or indirectly, through another person, firm, corporation, association, or entity (i) solicit business from, (ii) attempt to entice away from the Company, or (iii) interfere with the Company's relationship with any entity that is a client or customer of the Company, and with whom I had contact during the time I performed services for the Company.

d. **Limitations on Scope**. If any term or provision of this Section 3, or the application thereof, is deemed invalid or unenforceable by reason of its scope or extent, the court, or other body making such determination, shall reduce such scope or extent so that such term or provision is valid and enforceable to the fullest extent of the law. If any term or provision of this Agreement, or the application thereof, is deemed invalid or unenforceable in its entirety, such term or provision shall be severed from the Agreement, and the remaining provisions shall remain in full force and effect. If any term or provision of this Agreement is deemed invalid, or unenforceable, as applied to a particular person or circumstance, the application of such term or provision to other persons or circumstances shall not be affected thereby, and shall remain valid and enforceable to the fullest extent of the law.

#### 4. **GENERAL PROVISIONS**.

a. **At-Will Employment**. Nothing herein shall be construed as constituting an agreement, understanding, or commitment of any kind that the Company shall continue to employ me for any definite period, nor shall this Agreement limit, in any way, the Company's right to terminate my employment, at any time, for any reason whatsoever. Without limiting the generality of the foregoing, I acknowledge I will be subject to immediate dismissal, with or without notice, for any breach of this Agreement.

b. **Prohibition of Public Statements**. I agree that neither I, nor any person working on my behalf, in the performance of services for the Company shall make any public statements, or otherwise engage in any publicity concerning the Company, without the prior written consent of an authorized representative of the Company. Notwithstanding the foregoing, nothing in this Agreement shall preclude the Company from making public statements, or otherwise engaging in publicity, concerning my work on the Company's behalf.

c. **Disclosure of this Agreement.** In an effort to ensure my compliance with this Agreement, I acknowledge I may share this Agreement and the terms of this Agreement. If the Company no longer employs me, I will disclose the terms and restrictions of this Agreement to prospective employers. Furthermore, I may share this Agreement with my legal counsel, accountants, and immediate family members.

d. **Limitations.** Notwithstanding any other provisions of the Agreement, the following limitations apply.

i. **Defend Trade Secrets Act of 2016.** I may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) is made solely for the purpose of reporting, or investigating, a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. Furthermore, I understand any person who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the employer's trade secrets to her, his or their attorney and use the trade secret information in the court proceeding if that person: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.

ii. **Government Investigation.** I understand no provision of this Agreement shall be construed or interpreted to limit, restrict, or preclude either the Company or me from cooperating with any governmental agency in the performance of its investigatory, or other lawful, duties, including providing documents or other information to a government agency without notice to the Company.

iii. **Conflicting Obligations and Rights.** I represent and warrant my work for the Company, and my compliance with the terms of this Agreement, will not result in a breach of any other agreement, contract, or obligation, including any non-competition, confidentiality, or similar agreements. I further represent I have not entered into, and will not enter into, any agreement or contract that conflict with my obligations to the Company, or under this Agreement. I further represent I will notify the Company promptly after becoming aware of any conflicting agreement, contract, or obligation and, upon request, will provide to the Company a copy of such agreement. I agree, while performing my role at the Company, I shall not incorporate, utilize, or refer to any material including, but not limited to, any deliverable, report, questionnaire, table, chart, or graph, that contains any information that is not my original work created on,



or after, the date of my employment with the Company. I agree to indemnify, and hold harmless, the Company from any violations of this provision by me.

## 5. **ENFORCEMENT.**

a. **Survival of Covenants.** I acknowledge and agree the covenants made by me in this Agreement shall survive termination of my services to the Company, for whatever reason, whether voluntary or involuntary, and the existence of any claim, or cause of action, by me against the Company, whether predicated on this Agreement, or otherwise, shall not constitute a defense to the enforcement by the Company of such covenants.

b. **Remedies.** I acknowledge, in the event of a breach of my obligations under this Agreement, including, but not limited to, the obligations set forth in Section 3, the Company's business interests will be irreparably injured, the full extent of the Company's damages will be impossible to ascertain, monetary damages will not be an adequate remedy for the Company, and the Company will be entitled to enforce this Agreement by an injunction, or other equitable relief, without the necessity of posting bond or security, which I expressly waive. I understand the Company may waive some of the requirements expressed in this Agreement, but such a waiver to be effective must be made in writing by an authorized representative of the Company, and should not, in any way, be deemed a waiver of the Company's right to enforce any other requirements or provisions of this Agreement.

## 6. **GOVERNING LAW AND FORUM SELECTION.**

a. **Governing Law.** This Agreement and all matters relating to Employee's employment shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflicts of laws principles thereof. Each party to this Agreement (i) consents to the personal jurisdiction of the state and federal courts having jurisdiction in New Castle County, Delaware, (ii) stipulates that the proper, exclusive, and convenient forum and venue for legal adjudication of any issue arising out of this Agreement or relating to claims between the parties is New Castle County, Delaware for state court proceedings, and the United States District Court for the District of Delaware, for federal district court proceedings, and (iii) waives any defense, whether asserted by a motion or pleading, that New Castle County, Delaware, or the United States District Court for the District of Delaware, is an improper or inconvenient venue.

b. **Reasonable Attorney's Fees.** In the event of any action brought by either party against the other, and arising from this Agreement, the prevailing party shall be entitled to reasonable costs, expenses and attorneys' fees incurred in such action, and in collecting any judgment associated therewith.

c. **No Assignments.** Neither party may assign, or delegate, any

rights or obligations hereunder without first obtaining the written consent of the other party hereto; *provided, however*; the Company may assign its rights or obligations hereunder to an affiliate of the Company, or in connection with a sale of the Company, or substantially all of its assets.

d. **Amendment, Modification, and Waiver**. No amendments or additions to this Agreement shall be binding unless made in writing, and signed by both of the parties hereto. No delay or failure at any time on the part of the Company in exercising any right, power, or privilege under this Agreement, or in enforcing any provision of this Agreement, shall impair any such right, power, or privilege, or be construed as a waiver of any default or as any acquiescence therein, or shall affect the right of the Company thereafter to enforce each and every provision of this Agreement in accordance with its terms.

e. **Section Headings; Interpretation**. The section headings used in this Agreement are included solely for convenience, and shall not affect, or be used in connection with, the interpretation of this Agreement. As used in this Agreement, all references to Company shall also be construed to refer to the Company's respective subsidiaries and affiliates and this Agreement shall inure to the benefit of the Company, its subsidiaries, and its affiliates, as well as their respective successors and assigns.

f. **Severability**. I agree that each of my obligations specified in this Agreement is a separate and independent covenant that shall survive any termination of this Agreement, and the unenforceability of any of them shall not preclude the enforcement of any other covenants in this Agreement.

g. **Counterparts and Electronic Signature**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature (including portable document format) by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

h. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties, and supersedes all prior oral or written agreements, commitments or understandings, with respect to the matters provided for herein.

*[Signature Page Follows]*

By my signature below, I acknowledge I have carefully reviewed this Agreement and understand the covenants and obligations it contains are binding on me.

**EMPLOYEE**

\_\_\_\_\_

Date: \_\_\_\_\_

**LIQUIDITY SERVICES, INC.**

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_

Signature Page

to

Employee Agreement Regarding Confidentiality, Intellectual Property, and Competitive Activities

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**EXHIBIT A**

**TERMINATION CERTIFICATION**

This is to certify I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items belonging to Liquidity Services, Inc., its subsidiaries, affiliates, successors or assigns (together, the “**Company**”).

I further certify I have complied with all the terms of the Company’s Employee Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined therein), conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree, in compliance with the Employee Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data, or other proprietary information relating to products, processes, know-how, designs, formulae, developmental or experimental work, computer programs, data bases, other original works of authorship, customer lists, business plans, financial information, or other subject matter pertaining to any business of the Company, or any of its employees, clients, consultants, or licensees.

Date of Termination: \_\_\_\_\_

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**EXHIBIT B**

**LIST OR PRIOR IDEAS, INVENTIONS  
AND WRITINGS**

<u>Title</u>	<u>Date</u>	<u>or Brief Description</u>	Identifying Number
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         No Ideas, Inventions, and Writing

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

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

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

February 2, 2023

/s/ William P. Angrick, III

By: William P. Angrick, III

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

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

I, Jorge A. Celaya, certify that:

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

February 2, 2023

*/s/ Jorge A. Celaya*

By: Jorge A. Celaya

Title: *Chief Financial Officer*

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

In connection with the quarterly report of Liquidity Services, Inc. (the "Company") on Form 10-Q for the period ended December 31, 2022 as filed with the Securities and Exchange Commission (the "Report"), I, William P. Angrick, III, Chief Executive Officer of the Company, certify, to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

February 2, 2023

/s/ William P. Angrick, III

William P. Angrick, III

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

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

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

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

In connection with the quarterly report of Liquidity Services, Inc. (the "Company") on Form 10-Q for the period ended December 31, 2022 as filed with the Securities and Exchange Commission (the "Report"), I, Jorge A. Celaya, Chief Financial Officer of the Company, certify, to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

February 2, 2023

/s/ Jorge A. Celaya

Jorge A. Celaya

*Chief Financial Officer*

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

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

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