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

**FORM 10-Q**

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

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

OR

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

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

Commission file number: 000-55314

**nFűsz, Inc.**

(Exact name of Registrant as Specified in its Charter)

**Nevada**

(State or Other Jurisdiction of  
Incorporation or Organization)

**90-1118043**

(I.R.S. Employer  
Identification Number)

**344 S. Hauser Blvd  
Suite 414**

**Los Angeles, CA 90036**

(Address of Principal Executive Offices including Zip Code)

**(855) 250-2300**

(Registrant's Telephone Number, Including Area Code)

(Former name, former address and former fiscal year, if changed since last report)

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act Yes  No

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

Emerging growth company

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

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.

As of August 14, 2018, 153,698,043 shares of the issuer's common stock, par value of \$0.0001 per share, were outstanding.

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**nFÜSZ, INC.**  
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PART I — FINANCIAL INFORMATION

ITEM 1 – FINANCIAL STATEMENTS

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nFÜSZ, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS

	<u>June 30, 2018</u> (Unaudited)	<u>December 31, 2017</u>
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash	\$ 1,420,798	\$ 10,560
Prepaid expenses	47,646	40,909
Total current assets	<u>1,468,444</u>	<u>51,469</u>
Property and equipment, net	20,060	30,554
Other assets	<u>16,811</u>	<u>8,780</u>
<b>Total assets</b>	<b><u>\$ 1,505,315</u></b>	<b><u>\$ 90,803</u></b>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
<b>Current liabilities:</b>		
Accounts payable and accrued expenses	\$ 547,908	\$ 663,506
Accrued interest (including \$34,656 and \$99,425 payable to related parties)	34,656	248,120
Accrued officers' salary	124,250	607,333
Note payable	-	125,000
Notes payable - related party	1,964,985	1,964,985
Convertible notes payable, net of discount of \$0 and \$675,443, respectively	-	1,020,315
Derivative liability	<u>1,014,227</u>	<u>1,250,581</u>
Total current liabilities	<u>3,686,026</u>	<u>5,879,840</u>
<b>Commitments and contingencies</b>		
<b>Stockholders' deficit</b>		
Preferred stock, \$0.0001 par value, 15,000,000 shares authorized, none issued or outstanding	-	-
Common stock, \$0.0001 par value, 200,000,000 shares authorized, 153,698,043 and 119,118,513 shares issued and outstanding as of June 30, 2018 and December 31, 2017	15,370	11,912
Additional paid-in capital	33,066,404	22,738,574
Common stock issuable, 4,500,000 shares	-	430
Accumulated deficit	<u>(35,262,485)</u>	<u>(28,539,953)</u>
<b>Total stockholders' deficit</b>	<b><u>(2,180,711)</u></b>	<b><u>(5,789,037)</u></b>
<b>Total liabilities and stockholders' deficit</b>	<b><u>\$ 1,505,315</u></b>	<b><u>\$ 90,803</u></b>

The accompanying notes are an integral part of these condensed consolidated financial statements

**nFÜSZ, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Unaudited)

	For the Three Months Ended		For the Six Months Ended	
	<u>June 30, 2018</u>	<u>June 30, 2017</u>	<u>June 30, 2018</u>	<u>June 30, 2017</u>
Net Sales	\$ 8,239	\$ -	\$ 16,242	\$ -
<b>Operating Expenses:</b>				
Research and development	105,733	92,240	235,733	181,840
General and administrative	(490,145)	1,352,028	4,779,429	1,970,028
Total operating expenses	<u>384,412</u>	<u>(1,444,268)</u>	<u>(5,015,162)</u>	<u>(2,151,868)</u>
Income / (Loss) from operations	<u>392,651</u>	<u>(1,444,268)</u>	<u>(4,998,920)</u>	<u>(2,151,868)</u>
<b>Other income (expense)</b>				
Other Income / (Expense)	(6,141)	-	(12,380)	-
Change in fair value of derivative liability	1,444,164	-	(1,180,723)	-
Financing costs	-	-	(171,739)	-
Interest expense (including \$58,788 and \$58,788 to related parties for three months and \$116,930 and \$116,930 to related parties for six months)	(58,788)	(86,816)	(262,721)	(170,822)
Interest expense - amortization of debt discount	-	(53,346)	(747,623)	(93,024)
Gain on debt extinguishment, net	-	(526,871)	651,574	(552,871)
Total other expense	<u>1,379,235</u>	<u>(667,033)</u>	<u>(1,723,612)</u>	<u>(816,717)</u>
<b>Net Income / (Loss)</b>	<u>\$ 1,771,886</u>	<u>\$ (2,111,301)</u>	<u>\$ (6,722,532)</u>	<u>\$ (2,968,585)</u>
<b>Income / loss per share - basic and diluted</b>	<u>\$ 0.01</u>	<u>\$ (0.02)</u>	<u>\$ (0.05)</u>	<u>\$ (0.03)</u>
<b>Weighted average number of common shares outstanding - basic and diluted</b>	<u>152,539,980</u>	<u>102,734,185</u>	<u>142,335,253</u>	<u>99,184,826</u>

The accompanying notes are an integral part of these condensed consolidated financial statements

nFÜSZ, INC.  
**CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT**  
(Unaudited)

	<u>Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Common Stock Issuable</u>	<u>Accumulated Deficit</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>				
<b>Balance at December 31, 2017</b>	<b>119,118,513</b>	<b>\$ 11,912</b>	<b>\$ 22,738,574</b>	<b>\$ 430</b>	<b>\$ (28,539,953)</b>	<b>\$ (5,789,037)</b>
Common shares issued upon exercise of warrants	1,704,325	170	21,830	-	-	22,000
Common shares issued upon exercise of options	487,620	49	34,084	-	-	34,133
Proceeds from sale of common stock	17,459,067	1,746	2,976,754	-	-	2,978,500
Fair value of common shares issued for services	4,790,181	479	2,627,368	(430)	-	2,627,417
Fair value of common stock issued upon conversion of debt	7,383,006	738	2,276,561	-	-	2,277,299
Fair value of common stock issued upon conversion of accrued expenses	407,226	41	582,292	-	-	582,333
Common shares issued upon exercise of put option	3,048,105	305	999,695	-	-	1,000,000
Fair value of vested stock options	-	-	829,176	-	-	829,176
Stock repurchase	(700,000)	(70)	(19,930)	-	-	(20,000)
Net loss	-	-	-	-	(6,722,532)	(6,722,532)
<b>Balance at June 30, 2018</b>	<b><u>153,698,043</u></b>	<b><u>\$ 15,370</u></b>	<b><u>\$ 33,066,404</u></b>	<b><u>\$ -</u></b>	<b><u>\$ (35,262,485)</u></b>	<b><u>\$ (2,180,711)</u></b>

The accompanying notes are an integral part of these condensed consolidated financial statements

nFÜSZ, INC.  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Unaudited)

	<b>For the Six Months Ended</b>	
	<u>June 30, 2018</u>	<u>June 30, 2017</u>
<b>Operating Activities:</b>		
Net loss	\$ (6,722,532)	\$ (2,968,585)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>		
Share-based compensation	3,456,593	1,206,737
Change in fair value of derivative liability	1,180,723	-
Amortization of debt discount	747,623	93,024
Gain on debt extinguishment, net	(651,574)	552,871
Financing costs	171,739	-
Depreciation and amortization	10,494	10,668
<b>Effect of changes in assets and liabilities:</b>		
Accounts payable, accrued expenses, and accrued interest	(67,693)	317,330
Accounts receivable	-	8,468
Other assets	(8,031)	6,963
Prepaid expenses	(6,737)	(22,230)
Net cash used in operating activities	<u>(1,889,395)</u>	<u>(794,754)</u>
<b>Financing Activities:</b>		
Proceeds from sale of common stock	2,978,500	450,000
Proceeds from exercise of put option	1,000,000	-
Proceeds from convertible note payable	130,000	100,000
Proceeds from option exercise	34,133	-
Proceeds from warrant exercise	22,000	-
Proceeds from series A preferred stock	-	255,000
Payment of convertible notes payable	(845,000)	-
Repurchase common stock	(20,000)	-
Net cash provided by financing activities	<u>3,299,633</u>	<u>805,000</u>
Net change in cash	1,410,238	10,246
Cash - beginning of period	<u>10,560</u>	<u>16,762</u>
Cash - end of period	<u>\$ 1,420,798</u>	<u>\$ 27,008</u>
<b>Supplemental disclosures of cash flow information:</b>		
Cash paid for interest	\$ 314,066	\$ -
Cash paid for income taxes	\$ 800	\$ -
<b>Supplemental disclosure of non-cash investing and financing activities:</b>		
Conversion of note payable and accrued interest to common stock	\$ 2,277,299	\$ 110,880
Common stock issued to settle accrued officers salary	\$ 582,333	\$ -
Fair value of derivative liability from issuance of convertible debt and warrant features	\$ 301,739	\$ -
Conversion of notes payable to convertible notes payable	\$ -	\$ 56,000
Common stock issued to settle accounts payable	\$ -	\$ 100,000

The accompanying notes are an integral part of these condensed consolidated financial statements

**nFÜSZ, INC.**  
**Notes to Condensed Consolidated Financial Statements**  
**For the Six months Ended June 30, 2018 and 2017**  
**(Unaudited)**

**1. DESCRIPTION OF BUSINESS**

**Organization**

Cutaia Media Group, LLC (“CMG”) was organized on December 12, 2012, as a limited liability company under the laws of the State of Nevada. On May 19, 2014, bBooth, Inc. was incorporated under the laws of the State of Nevada. On May 19, 2014, CMG merged into bBooth, Inc. and, thereafter, bBooth, Inc. changed its name to bBooth (USA), Inc., effective as of October 16, 2014.

On October 16, 2014, bBoothUSA was acquired by Global System Designs, Inc. (“GSD”), pursuant to a Share Exchange Agreement entered into with GSD (the “Share Exchange Agreement”). GSD was incorporated in the state of Nevada on November 27, 2012. The acquisition was accounted for as a reverse merger transaction. In connection with the closing of the transactions contemplated by the Share Exchange Agreement, GSD’s management was replaced by bBoothUSA’s management, and GSD changed its name to bBooth, Inc. The operations of CMG and bBooth (USA), Inc. became known as, and are referred to herein as, “bBooth USA.”

Effective April 21, 2017, we changed our corporate name from bBooth, Inc. to nFüz, Inc. The name change was effected through a parent/subsidiary short-form merger of nFüz, Inc., our wholly-owned Nevada subsidiary, formed solely for the purpose of the name change, with and into us. We were the surviving entity. To effectuate the merger, we filed Articles of Merger and a Certificate of Correction (relative to the effective date of the name change merger) with the Secretary of State of the State of Nevada on April 4, 2017, and April 17, 2017, respectively. The merger became effective on April 21, 2017. Our board of directors approved the merger, which resulted in the name change on that date. In accordance with Section 92A.180 of the Nevada Revised Statutes, stockholder approval of the merger was not required.

**Our Business**

We are an applications services provider marketing cloud-based business software products on a subscription basis. Our flagship product, notifiCRM, is a Customer Relationship Management (“CRM”) application that is distinguishable from other CRM programs because it utilizes interactive video as the primary means of communication between sales and marketing professionals and their clients or prospects. notifiCRM allows our users to create, distribute, and post interactive videos that contain on-screen interactive icons, buttons, and other elements, that when clicked, allow their prospects and customers to respond to our users’ call to action in real-time, in the video, while the video is playing, without leaving or stopping the video. Our users report increased sales conversion rates compared to traditional, non-interactive video. We developed the proprietary interactive video technology, which serves as the basis for our cloud, Software-as-a-Service (SaaS) products and services that we market under the brand name “notifi” and they are accessible on all mobile and desktop devices. No download is required to access and use our applications. Our users also have access to detailed analytics in the application dashboard that reflect when the videos were viewed, by whom, how many times, for how long, and what interactive elements were clicked-on in the video, among other things, all of which assist our users in focusing their sales and marketing efforts by identifying which clients or prospects have interest in the subject matter of the video.

Our notifiCRM platform can accommodate any size campaign or sales organization, and it is enterprise-class scalable to meet the needs of today’s global organizations. We are working with our vendors to ensure that it is so scalable based upon our current agreements with them. We offer stand-alone versions of our notifiCRM product on a subscription basis to individual consumers, sales-based organizations, consumer brands, marketing and advertising agencies, as well as to artists and social influencers. We also offer notifiCRM through a network of partners and resellers that include Oracle/NetSuite and Marketo, who offer notifiCRM to their respective clients and customers as an upgrade to their existing Oracle/NetSuite or Marketo subscriptions. notifiCRM is fully integrated into each of their platforms and upon payment of the upgrade fee, is accessible through the respective dashboards of Oracle/NetSuite and Marketo. We are actively developing integrations of notifiCRM into other popular marketing, CRM, and Enterprise Resource Management (ERP) platforms.

Our notifiMED application is designed for physicians and other healthcare providers to create more efficient and effective interactive communications with patients. Patients are able to avoid unnecessary and inconvenient visits to their physicians’ or other healthcare providers’ offices by viewing and responding to interactive videos through in-video, on-screen clicks that are designed to assess the patients’ need for an office visit. If the patient’s responses to the interactive video indicate that an office visit is either necessary or desirable, the patient can schedule the office visit right in through video in real time. Patients can also download and print prescriptions, care instructions, and other physician distributed documents right from and through the video. notifiMED is offered on a subscription basis.



Our notifiedEDU application is designed for teachers and school administrators for more effective communications with students, parents, and faculty. notifiedEDU allows teachers to deliver interactive lessons to students which are both more engaging and more effective. notifiedEDU allows teachers to communicate with students through their mobile devices and computers to deliver lessons and tests/quizzes on the screen and in the video. The analytics capabilities of notifiedEDU available on the dashboard of the teacher or school administrator allows them to track which students watched the lesson, when, for how long, how many times, and track and report on test/quiz results. notifiedEDU is offered on a subscription basis.

Our notifiedTV and notifiedLIVE products are also part of our proprietary interactive video platform that allows viewers to interact with pre-recorded as well as live broadcast video content by clicking on links embedded in on-screen people, objects, graphics, or sponsors' signage. Viewers can experience our notifiedTV and notifiedLIVE interactive content and capabilities on most devices available in the market today without the need to download special software or proprietary video players.

## **2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

### ***Basis of Presentation***

The accompanying condensed consolidated financial statements are unaudited. These unaudited interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and applicable rules and regulations of the Securities and Exchange Commission ("SEC") regarding interim financial reporting. Certain information and note disclosures normally included in the financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. Accordingly, these interim condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto contained in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2017 filed with the SEC. The condensed consolidated balance sheet as of December 31, 2017 included herein was derived from the audited consolidated financial statements as of that date.

In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all adjustments necessary to fairly present the Company's financial position and results of operations for the interim periods reflected. Except as noted, all adjustments contained herein are of a normal recurring nature. Results of operations for the fiscal periods presented herein are not necessarily indicative of fiscal year-end results.

### ***Principles of Consolidation***

The consolidated financial statements include the accounts of nFüz, Inc., (formerly bBooth, Inc.) and Songstagram, Inc. ("Songstagram"), our wholly owned subsidiary. All intercompany transactions and balances have been eliminated in consolidation.

### ***Going Concern***

We have incurred operating losses since inception and have negative cash flows from operations. We had a stockholders' deficit of \$2,180,711 as of June 30, 2018 and incurred a net loss of \$6,722,532 and utilized \$1,889,395 of cash during the six-month period then ended. These factors raise substantial doubt about the Company's ability to continue as a going concern. The ability of the Company to continue as a going concern is dependent upon the Company's ability to raise additional funds and implement its business plan. The financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern. In addition, the Company's independent registered public accounting firm, in its report on the Company's December 31, 2017 consolidated financial statements, has raised substantial doubt about the Company's ability to continue as a going concern.

Our continuation as a going concern is dependent on our ability to obtain additional financing until we can generate sufficient cash flows from operations to meet our obligations. We intend to continue to seek additional debt or equity financing to continue our operations. There is no assurance that we will ever be profitable or that debt or equity financing will be available to us. The consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result should we be unable to continue as a going concern.

### ***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reported periods. Significant estimates include assumptions made in valuing derivative liabilities, valuation of debt and equity instruments, share-based compensation arrangements and realization of deferred tax assets. Amounts could materially change in the future.

### ***Revenue Recognition***

We generate substantially all of our revenue from subscription services, which are comprised of subscription fees from customer accounts. Subscription service arrangements are generally non-cancelable and do not provide for refunds to customers in the event of cancellations or any other right of return. We record revenue net of sales or excise taxes.

In May 2014, the FASB issued ASU 2014-09, Revenue from Contracts with Customers (Topic 606), and (ASC 606). The underlying principle of ASC 606 is to recognize revenue to depict the transfer of goods or services to customers at the amount expected to be collected. ASC 606 creates a five-step model that requires entities to exercise judgment when considering the terms of contract(s), which includes (1) identifying the contract(s) or agreement(s) with a customer, (2) identifying our performance obligations in the contract or agreement, (3) determining the transaction price, (4) allocating the transaction price to the separate performance obligations, and (5) recognizing revenue as each performance obligation is satisfied.

Under ASC 606, revenue is recognized when performance obligations under the terms of a contract are satisfied, which occurs for the Company upon shipment or delivery of products or services to our customers based on written sales terms, which is also when control is transferred. Revenue is measured as the amount of consideration we expect to receive in exchange for transferring the products or services to a customer.

The Company adopted the guidance of ASC 606 on January 1, 2018. The implementation of ASC 606 had no impact on the prior period financial statements and no cumulative effect adjustment was recognized.

### ***Derivative Financial Instruments***

The Company evaluates its financial instruments to determine if such instruments are derivatives or contain features that qualify as embedded derivatives. For derivative financial instruments that are accounted for as liabilities, the derivative instrument is initially recorded at its fair value and is then re-valued at each reporting date, with changes in the fair value reported in the consolidated statements of operations. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is evaluated at the end of each reporting period. Derivative instrument liabilities are classified in the balance sheet as current or non-current based on whether or not net-cash settlement of the derivative instrument could be required within 12 months of the balance sheet date.

The Company uses Level 2 inputs for its valuation methodology for the derivative liabilities as their fair values were determined by using a probability weighted average Black-Scholes-Merton pricing model based on various assumptions. The Company's derivative liabilities are adjusted to reflect fair value at each period end, with any increase or decrease in the fair value being recorded in results of operations as adjustments to fair value of derivatives.

### ***Share Based Payments***

The Company issues stock options, common stock, and equity interests as share-based compensation to employees and non-employees. The Company accounts for its share-based compensation to employees in accordance with FASB ASC 718 "Compensation – Stock Compensation." Stock-based compensation cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as expense over the requisite service period.

The Company accounts for share-based compensation issued to non-employees and consultants in accordance with the provisions of FASB ASC 505-50 "Equity - Based Payments to Non-Employees." Measurement of share-based payment transactions with non-employees is based on the fair value of whichever is more reliably measurable: (a) the goods or services received; or (b) the equity instruments issued. The final fair value of the share-based payment transaction is determined at the performance completion date. For interim periods, the fair value is estimated, and the percentage of completion is applied to that estimate to determine the cumulative expense recorded.

The Company values stock compensation based on the market price on the measurement date. As described above, for employees this is the date of grant, and for non-employees, this is the date of performance completion. The Company values stock options and warrants using the Black-Scholes option pricing model.

#### ***Net Loss Per Share***

Basic net loss per share is computed by using the weighted-average number of common shares outstanding during the period. Diluted net loss per share is computed giving effect to all dilutive potential common shares that were outstanding during the period. Dilutive potential common shares consist of incremental common shares issuable upon exercise of stock options. No dilutive potential common shares were included in the computation of diluted net loss per share because their impact was anti-dilutive. As of June 30, 2018, the Company had a total of 21,284,605 options and 29,407,413 warrants outstanding, and the potential issuance of approximately 11.2 million shares of common stock upon conversion of notes payable. These shares were excluded from the computation of net loss per share because they are anti-dilutive. As of June 30, 2017, the Company had total of 23,030,953 options and 20,540,456 warrants and potential issuance of approximately 14.2 million shares of common stock which were excluded from the computation of net loss per share because they are anti-dilutive.

#### ***Recent Accounting Pronouncements***

In February 2016, the FASB issued Accounting Standards Update No. 2016-02 (ASU 2016-02), Leases (Topic 842). ASU 2016-02 requires a lessee to record a right-of-use asset and a corresponding lease liability, initially measured at the present value of the lease payments, on the balance sheet for all leases with terms longer than 12 months, as well as the disclosure of key information about leasing arrangements. ASU 2016-02 requires recognition in the statement of operations of a single lease cost, calculated so that the cost of the lease is allocated over the lease term, generally on a straight-line basis. ASU 2016-02 requires classification of all cash payments within operating activities in the statement of cash flows. Disclosures are required to provide the amount, timing and uncertainty of cash flows arising from leases. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available. ASU 2016-02 is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. Early application is permitted. The Company has not yet evaluated the impact of the adoption of ASU 2016-02 on the Company's financial statement presentation or disclosures.

In July 2017, the FASB issued ASU No. 2017-11, "Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815): (Part I) Accounting for Certain Financial Instruments with Down Round Features; (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception" ("ASU 2017-11"). ASU 2017-11 allows companies to exclude a down round feature when determining whether a financial instrument (or embedded conversion feature) is considered indexed to the entity's own stock. As a result, financial instruments (or embedded conversion features) with down round features may no longer be required to be accounted for as derivative liabilities. A company will recognize the value of a down round feature only when it is triggered, and the strike price has been adjusted downward. For equity-classified freestanding financial instruments, an entity will treat the value of the effect of the down round as a dividend and a reduction of income available to common stockholders in computing basic earnings per share. For convertible instruments with embedded conversion features containing down round provisions, entities will recognize the value of the down round as a beneficial conversion discount to be amortized to earnings. ASU 2017-11 is effective for fiscal years beginning after December 15, 2018, and interim periods within those fiscal years. Early adoption is permitted. The guidance in ASU 2017-11 can be applied using a full or modified retrospective approach. The Company is currently evaluating the impact of the adoption of ASU 2017-11 on the Company's financial statement presentation or disclosures.

Other recent accounting pronouncements issued by the FASB, including its Emerging Issues Task Force, the American Institute of Certified Public Accountants, and the Securities and Exchange Commission did not or are not believed by management to have a material impact on the Company's present or future consolidated financial statements.

### 3. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following as of June 30, 2018 and December 31, 2017.

	<u>June 30, 2018</u>	<u>December 31, 2017</u>
	(Unaudited)	
Furniture and fixtures	\$ 56,890	\$ 56,890
Office equipment	50,669	50,669
	107,559	107,559
Less: accumulated depreciation	(87,499)	(77,005)
	<u>\$ 20,060</u>	<u>\$ 30,554</u>

Depreciation expense amounted to \$10,494 and \$10,668 for six months ended June 30, 2018 and 2017, respectively.

### 4. NOTE PAYABLE

On March 21, 2015, the Company entered into an agreement with DelMorgan Group LLC ("DelMorgan"), pursuant to which DelMorgan agreed to act as the Company's exclusive financial advisor. In connection with the agreement, the Company paid DelMorgan \$125,000, which was advanced by a third-party lender in exchange for an unsecured note payable issued by the Company bearing interest at the rate of 12% per annum payable monthly beginning on April 20, 2015.

Effective March 20, 2017, for no additional consideration the Company entered into an extension agreement with the third-party lender to extend the maturity date of the Note to March 21, 2018. All other terms of the Note remain unchanged. As of December 31, 2017, the balance due under the note was \$125,000.

On January 29, 2018, the Company settled the debt of \$125,000 in exchange for 1,250,000 shares of its Common Stock. There was no gain or loss recognized as the fair value of the common shares issued approximates the note payable settled.

### 5. NOTES PAYABLE – RELATED PARTIES

The Company has the following related parties notes payable as of June 30, 2018 and December 31, 2017:

Note	Issuance Date	Maturity Date	Interest Rate	Original Borrowing	Balance at June 30, 2018 (Unaudited)	Balance at December 31, 2017
Note 1 (A)	December 1, 2015	August 1, 2018	12.0%	\$ 1,248,883	\$ 1,198,883	\$ 1,198,883
Note 2	December 1, 2015	August 1, 2018	12.0%	189,000	189,000	189,000
Note 3 (B)	December 1, 2015	April 1, 2017	12.0%	111,901	111,901	111,901
Note 4 (C)	August 4, 2016	December 4, 2018	12.0%	343,326	343,326	343,326
Note 5	August 4, 2016	December 4, 2018	12.0%	121,875	121,875	121,875
Total notes payable – related parties, net					<u>\$ 1,964,985</u>	<u>\$ 1,964,985</u>

(A) Per the terms of the agreement, at Mr. Cutaita's discretion (majority stockholder and Chief Executive Officer (CEO)), he may convert up to \$374,665 of outstanding principal, plus accrued interest thereon, into shares of common stock at a conversion rate of \$0.07 per share.

(B) As of June 30, 2018, and the date of this report, the note is past due. The Company is currently in negotiations with the note holder to settle the note payable.

(C) A total of 30% of the note principal can be converted to shares of common stock at a conversion price \$0.07 per share.

Total interest expense for notes payable to related parties for the six months ended June 30, 2018 and 2017 was \$58,788 for each period.

## 6. CONVERTIBLE NOTES PAYABLE

The Company has the following convertible notes payable as of June 30, 2018 and December 31, 2017:

Note	Note Date	Maturity Date	Interest Rate	Original Borrowing	Balance at June 30, 2018 (Unaudited)	Balance at December 31, 2017
Note payable	April 3, 2016	April 4, 2018	12%	\$ 600,000	\$ -	\$ 680,268
Note payable	June and August 2017	February and March 2018	5%	\$ 220,500	-	220,500
Note payable	Various	Various	5%	\$ 320,000	-	320,000
Note payable	December 8, 2017	December 8, 2018	8%	\$ 370,000	-	370,000
Note payable	December 13, 2017	September 20, 2018	8%	\$ 105,000	-	105,000
Total notes payable					-	1,695,768
Debt discount					-	(675,453)
Total notes payable, net of debt discount					\$ -	\$ 1,020,315

During 2016 through 2017, the Company issued convertible notes payable to unrelated, third-party creditors/investors totaling \$1,695,768. The notes bore an average interest rate of 8% per annum, secured by the Company's assets, mature starting February 2018 through January 2019 and are convertible to shares of common stock based upon a discounted market price. As of June 30 2018, outstanding balance of the notes payable and unamortized debt discount was zero.

During the period ended June 30, 2018, the Company issued similar convertible notes payable totaling \$150,000 in exchange for cash of \$130,000. The Company determined that since the conversion floor had no limit to the conversion price, that the Company could no longer determine if it had enough authorized shares to fulfil the conversion obligation. As such, pursuant to current accounting guidelines, the Company determined that the conversion feature of the notes created a derivative with a fair value of \$252,778 at the date of issuance. The Company accounted for the fair value of the derivative up to the face amount of the note of \$150,000 as a valuation discount amortized over the life of the note, and the excess of \$102,778 being recorded as financing cost (see Note 7 for discussion of derivative liability). In addition, the Company also recorded the notes' original issue discount of \$20,000 as financing costs.

As part of the offering, the Company also granted a five-year warrant to acquire 1,000,000 shares of the Company's common stock with an exercise price of \$0.14 per share. A total of 500,000 warrants that were granted included a full ratchet reset provision in case of a future offering at a price below \$0.14 per share and a fundamental transaction provision that could give rise to an obligation to pay cash to the warrant holder and a reset. As such, pursuant to current accounting guidelines, the Company determined that the warrant exercise price and fundamental transaction clause created a derivative with a fair value of \$48,961 at the date of issuance. The Company accounted for the fair value of the derivative as financing cost. See Note 7 for discussion of derivative liability.

During the period ended June 30, 2018, the Company paid \$845,000 to settle certain outstanding convertible notes payable. In addition, the Company also issued 6,133,006 shares of common stock to settle the remaining convertible notes payable and accrued interest. As part of the settlement, the Company recorded a loss on debt extinguishment of \$1,067,242 to account for the fair value of the common shares issued to a note holder who's note was not fully convertible to common shares. Furthermore, the Company amortized the remaining debt discount of \$747,623 to interest expense. As of June 30, 2018, all convertible notes payable and unpaid interest had been paid or settled.

Total interest expense for convertible notes payable for the six months ended June 30, 2018 and 2017 was \$144,541 and \$40,481, respectively.

## 7. DERIVATIVE LIABILITY

Under authoritative guidance used by the FASB on determining whether an instrument (or embedded feature) is indexed to an entity's own stock, instruments that do not have fixed settlement provisions are deemed to be derivative instruments. The Company has issued certain convertible notes whose conversion prices contains reset provisions based on a future offering price and/or whose conversion prices are based on future market prices. However, since the number of shares to be issued is not explicitly limited, the Company is unable to conclude that enough authorized and unissued shares are available to share settle the conversion option. In addition, the Company also granted certain warrants that included a fundamental transaction provision that could give rise to an obligation to pay cash to the warrant holder.

As a result, the conversion option and warrants are classified as liabilities and are bifurcated from the debt host and accounted for as a derivative liability in accordance with ASC 815 and will be re-measured at the end of every reporting period with the change in value reported in the statement of operations.

The derivative liabilities were valued using a probability weighted average Black-Scholes-Merton pricing model with the following average assumptions:

	June 30, 2018	Upon Issuance	December 31, 2017
Stock Price	\$ 0.60	\$ 0.10	\$ 0.10
Exercise Price	\$ 0.13	\$ 0.08	\$ 0.06
Expected Life	4.50	2.33	1.26
Volatility	226%	193%	189%
Dividend Yield	0%	0%	0%
Risk-Free Interest Rate	1.89%	1.18%	1.72%
Fair Value	<u>\$ 1,014,227</u>	<u>\$ 301,739</u>	<u>\$ 1,250,581</u>

The expected life of the conversion feature of the notes and warrants was based on the remaining contractual term of the notes and warrants. The Company uses the historical volatility of its common stock to estimate the future volatility for its common stock. The expected dividend yield was based on the fact that the Company has not paid dividends in the past and does not expect to pay dividends in the future. The risk-free interest rate was based on rates established by the Federal Reserve Bank. As of December 31, 2017, the Company had recorded a derivative liability of \$1,250,581.

During the period ended June 30, 2018, the Company recorded an additional derivative liability totaling \$301,739 as a result of the issuance of convertible notes and warrants. The Company also extinguished a derivative liability of \$1,718,816 upon the conversion and payment of outstanding convertible notes payable, which was recorded as part of gain on extinguishment of debt. In addition, the Company also recorded a change in fair value of \$1,180,723 to account the change in fair value of these derivative liabilities up to the dates of the extinguishment and at June 30, 2018. At June 30, 2018, the fair value of the derivative liability amounted to \$1,014,227.

## 8. EQUITY TRANSACTIONS

The Company's common stock activity for the six months ended June 30, 2018 is as follows:

### *Common Stock*

**Shares Issued from Exercise of Warrants** – During the period ended June 30, 2018, a total of 1,981,000 warrants were exercised in cash and cashless exercises for the issuance of an aggregate of 1,704,325 shares of common stock. The Company received cash of \$22,000 upon exercise of the warrants.

**Shares Issued from Exercise of Options** – During the period ended June 30, 2018, a total of 487,620 options were exercised in cash exercises for 487,620 shares of common stock. The Company received cash of \$34,133 upon exercise of the options.

**Shares Issued from Stock Subscription** – During the period ended June 30, 2018, the Company issued 17,459,067 shares of common stock to investors for net cash proceeds of \$2,978,500.

**Shares Issued for Services** – During the period ended June 30, 2018, the Company issued 4,790,181 shares of common stock to employees and vendors for services rendered with a fair value of \$2,627,417. These shares of common stock were valued based on market value of the Company's stock price at the date of grant or agreement. Included in these issuances were 4,500,000 shares of common stock with a fair value of \$1,539,000 granted to officers and a director of the Company for services rendered.

**Shares Issued from Conversion of Note Payable** – During the period ended June 30, 2018, the Company issued 7,383,006 shares of common stock upon conversion of notes payable and accrued interest (see Notes 4 and 6).

**Shares Issued for Accrued Salary** – On March 28, 2018, the Company converted \$582,333 of the CEO's accrued salary into 407,226 shares of common stock with a fair value of \$582,333 at the date of conversion.

**Shares Issued Upon Exercise of Put Option** – In January and February 2018, the Company issued Put Notices to Kodiak and issued 3,048,105 shares of common stock in exchange for cash of \$1,000,000. In addition, the Company also issued Kodiak the prorated warrants to purchase 2,000,000 shares of common stock at \$0.25 per share.

**Shares Repurchased.** For the period ended June 30, 2018, the Company repurchased 700,000 shares of common stock from investors for \$20,000.

### *Stock Options*

Effective October 16, 2014, the Company adopted the 2014 Stock Option Plan (the "Plan") under the administration of the board of directors to retain the services of valued key employees and consultants of the Company.

At its discretion, the Company grants share option awards to certain employees and non-employees, as defined by ASC 718, Compensation—Stock Compensation, under the 204 Stock Option Plan (the "Plan") and accounts for its share-based compensation in accordance with ASC 718.

A summary of option activity for the six months ended June 30, 2018 is presented below.

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in Years)	Aggregate Intrinsic Value
Outstanding at December 31, 2017	21,840,953	\$ 0.33	2.09	
Granted	1,006,272	0.33		
Exercised	(487,620)	0.07		
Forfeited or expired	(1,075,000)	0.55		
Outstanding at June 30, 2018	<u>21,284,605</u>	<u>\$ 0.26</u>	<u>1.68</u>	<u>\$ 7,533,282</u>
Exercisable at June 30, 2018	<u>9,204,808</u>	<u>\$ 0.36</u>		<u>\$ 2,406,294</u>

During the six months ended June 30, 2018, the Company granted stock options to employees and consultants to purchase a total 1,006,272 shares of common stock for services rendered. The options have an average exercise price of \$0.33 per share, expire in five years and vest on grant date or over a period of three years from grant date. Total fair value of these options at grant date was \$259,105 using the Black-Scholes Option Pricing model.

The total stock compensation expense recognized relating to vesting of employee stock options for the six months ended June 30, 2018 amounted to \$829,176. As of June 30, 2018, total unrecognized stock-based compensation expense was \$1,563,155, which is expected to be recognized as part of operating expense through May 2021.

The fair value of share option award is estimated using the Black-Scholes method based on the following weighted-average assumptions:

	Six Months Ended June 30,	
	2018	2017
Risk-free interest rate	2.25% - 2.85%	1.76% - 1.93%
Average expected term (years)	5 years	5 years
Expected volatility	184% -190%	157 %-160%
Expected dividend yield	-	-

The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of measurement corresponding with the expected term of the share option award; the expected term represents the weighted-average period of time that share option awards granted are expected to be outstanding giving consideration to vesting schedules and historical participant exercise behavior; the expected volatility is based upon historical volatility of the Company's common stock; and the expected dividend yield is based on the fact that the Company has not paid dividends in the past and does not expect to pay dividends in the future.



## Warrants

The Company has the following warrants outstanding as of June 30, 2018 all of which are exercisable:

	<u>Warrants</u>	<u>Weighted-Average Exercise Price</u>	<u>Weighted-Average Remaining Contractual Life (Years)</u>	<u>Aggregate Intrinsic Value</u>
Outstanding at December 31, 2017	28,436,413	\$ 0.13	2.79	\$ -
Granted	3,000,000	0.21	-	-
Forfeited	(48,000)	0.10	-	-
Exercised	(1,981,000)	0.15	-	-
Outstanding at June 30, 2018	<u>29,407,413</u>	<u>\$ 0.14</u>	<u>2.97</u>	<u>\$ 13,619,258</u>
Exercisable at June 30, 2018	29,407,413			\$ 13,619,258

During the six months ended June 30, 2018, the Company granted warrants to note holders to purchase a total of 1,000,000 shares of common stock. The warrants are exercisable at an average price of \$0.14 per share and will expire in January 2023. A total of 500,000 warrants that had been granted were accounted as derivative liability (see Note 6).

On February 21, 2018, the Company granted 2,000,000 warrants as part of the exercise of our put option with Kodiak. The exercise price of the 2,000,000 warrants is \$0.25 per share and they expire on February 20, 2023.

During the six months ended June 30, 2018, a total of 1,981,000 warrants were exercised in cash and cashless exercises for 1,704,325 shares of common stock at a weighted average exercise price of \$0.15. As part of these exercises, the Company also received \$22,000 upon the exercises.

## 9. COMMITMENTS AND CONTINGENCIES

### Litigation

On April 24, 2018, EMA Financial, LLC, a New York limited liability company (“EMA”), commenced an action against us, styled *EMA Financial, LLC, a New York limited liability company, Plaintiff, against nFUSZ, Inc., Defendant*, United States District Court, Southern District of New York, case number 1:18-cv-03634-NRB. The Complaint sets forth four causes of action and seeks relief consisting of: (1) money damages, (2) injunctive relief, (3) liquidated damages; and declaratory relief. All of the claims stem from our refusal to honor EMA’s exercise notice in connection with a common stock purchase warrant that we had granted to it. We believe EMA’s allegations are entirely without merit.

The circumstances giving rise to the dispute are as follows: On or about December 5, 2017, we issued a warrant to EMA as part of the consideration we were required to provide in connection with a contemporaneous convertible loan EMA made to us. The loan, which was evidenced by a convertible Note, was for a term of one year. Our refusal to honor the warrant exercise notice was due to our good faith belief that EMA’s interpretation of the cashless exercise provision of the warrant was, *inter alia*, (i) contrary to our direct conversations and agreements made with EMA prior to, and during the preparation of the loan and warrant agreements; (2) wholly inconsistent with industry norms, standards, and practices; (3) was contrary to the cashless exercise method actually adopted by EMA’s co-lender in the same transaction; and (4) was the result of a single letter mistakenly transposed in the cashless exercise formula drafted by EMA which if adopted, would result in a gross and unintended windfall in favor of EMA and adverse to us. Moreover, as set forth in our response to EMA’s allegations, EMA’s interpretation of the cashless exercise provision would have resulted in it being issued more shares of our common stock than it would have received if it exercised the warrant for cash (instead of less), and more than the amount of shares reflected on the face of the warrant agreement itself. The loan underlying the transaction was repaid, in full, approximately three months after it was issued, on March 8, 2018, together with all accrued interest, prior to any conversion or attempted conversion of the Note.

On July 20, 2018, we filed an Answer to the Complaint, along with certain Affirmative Defenses, as well as Counterclaims seeking *inter alia*, to void the entire transaction for violation of New York’s criminal usury laws and, alternatively, for reformation of the warrant conversion formula set forth in the Warrant Agreement so as to be consistent with the parties’ intent and custom and practice in the industry. We intend to vigorously defend the action, as well as vigorously prosecute our counterclaims against EMA. The action is still pending.

We know of no other material pending legal proceedings to which we or any of our subsidiaries is a party or to which any of our assets or properties, or the assets or properties of any of our subsidiaries, are subject and, to the best of our knowledge, no adverse legal activity is anticipated or threatened. In addition, we do not know of any such proceedings contemplated by any governmental authorities.

## 10. SUBSEQUENT EVENTS

Subsequent to June 30, 2018, two existing consultants were hired as employees of the Company. In connection with their employment agreements, the Company granted 4,800,000 non-qualified stock options with a fair value of \$2,902,453. 1,500,000 of the options vested on the grant date, while the remaining 3,300,000 options vest annually over three years on the employees' anniversary dates with an average exercise price of \$0.40. As a result, the Company will record stock compensation expense of \$910,844 for the vested options. In addition, the Company also cancelled 3,100,000 unvested non-qualified stock options previously granted to these individuals when they were consultants of the Company. As a result of these cancellations, the Company reversed previously recorded stock compensation expense of \$616,990.

Subsequent to June 30, 2018, the Company granted 300,000 non-qualified stock options with a fair value of \$166,510 to consultants for services to be rendered. The options vest annually over three years with an exercise price of \$0.60.

Subsequent to June 30, 2018, the Company granted 1,250,000 non-qualified stock options with a fair value of \$611,909 to employees for services to be rendered. The options vest annually over three years with an exercise price of \$0.60.

Effective August 8, 2018, the Company entered into an extension agreement (the "Extension Agreement") with Rory J. Cutaia, CEO and Chairman, to extend the maturity date of the \$1,248,883 Secured Note due on August 1, 2018 to and including February 8, 2021. In consideration for extending the Note the Company issued Mr. Cutaia 2,446,700 warrants at a price of \$0.49. All other terms of the Note remain unchanged.

Effective August 8, 2018, the Company entered into an extension agreement (the "Extension Agreement") with Rory J. Cutaia, CEO and Chairman, to extend the maturity date of the \$189,000 Unsecured Note due on August 1, 2018 to and including February 8, 2021. There was no consideration given and all other terms of the Note remain unchanged.

### ITEM 1A – RISK FACTORS

Not applicable to smaller reporting companies.

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

### Forward-Looking Statements

*The following discussion and analysis of the results of operations and financial condition of nFüsz for the three- and six-month periods ended June 30, 2018 and 2017, should be read in conjunction with the financial statements and related notes and the other financial information that are included elsewhere in this Quarterly Report. This discussion includes forward-looking statements based upon current expectations that involve risks and uncertainties, such as our plans, objectives, expectations, and intentions. Forward-looking statements are statements not based on historical fact and which relate to future operations, strategies, financial results, or other developments. Forward-looking statements are based upon estimates, forecasts, and assumptions that are inherently subject to significant business, economic, and competitive uncertainties and contingencies, many of which are beyond our control and many of which, with respect to business decisions, are subject to change. These uncertainties and contingencies can affect actual results to differ materially from those expressed in any forward-looking statements made by us, or on our behalf. We disclaim any obligation to update forward-looking statements. Actual results and the timing of events could differ materially from those anticipated in these forward-looking statements as a result of a number of factors. We use words such as "anticipate," "estimate," "plan," "project," "continuing," "ongoing," "expect," "believe," "intend," "may," "will," "should," "could," and similar expressions to identify forward-looking statements.*

*As used in this Quarterly Report on Form 10-Q, the terms “we,” “us,” “our,” and “nFüsz” refer to nFüsz, Inc., a Nevada corporation unless otherwise specified.*

## **Overview**

Cutaia Media Group, LLC (“CMG”) was organized on December 12, 2012, as a limited liability company under the laws of the State of Nevada. On May 19, 2014, bBooth, Inc. was incorporated under the laws of the State of Nevada. On May 19, 2014, CMG merged into bBooth, Inc. and, thereafter, bBooth, Inc. changed its name to bBooth (USA), Inc., effective as of October 16, 2014.

On October 16, 2014, bBoothUSA was acquired by Global System Designs, Inc. (“GSD”), pursuant to a Share Exchange Agreement entered into with GSD (the “Share Exchange Agreement”). GSD was incorporated in the state of Nevada on November 27, 2012. The acquisition was accounted for as a reverse merger transaction. In connection with the closing of the transactions contemplated by the Share Exchange Agreement, GSD’s management was replaced by bBoothUSA’s management, and GSD changed its name to bBooth, Inc. The operations of CMG and bBooth (USA), Inc. became known as, and are referred to herein as, “bBooth USA.”

Effective April 21, 2017, we changed our corporate name from bBooth, Inc. to nFüsz, Inc. The name change was effected through a parent/subsidiary short-form merger of nFüsz, Inc., our wholly-owned Nevada subsidiary, formed solely for the purpose of the name change, with and into us. We were the surviving entity. To effectuate the merger, we filed Articles of Merger and a Certificate of Correction (relative to the effective date of the name change merger) with the Secretary of State of the State of Nevada on April 4, 2017, and April 17, 2017, respectively. The merger became effective on April 21, 2017. Our board of directors approved the merger, which resulted in the name change on that date. In accordance with Section 92A.180 of the Nevada Revised Statutes, stockholder approval of the merger was not required.

## **Results of Operations**

### *Three Months Ended June 30, 2018 as Compared to the Three Months Ended June 30, 2017*

#### **Revenues**

Subscription revenues for the three months ended June 30, 2018 were \$8,239, compared to \$0 for the three months ended June 30, 2017. The increase in subscription revenues were primarily attributable to the Company’s SaaS platform that was launched during the fourth quarter of fiscal 2017. There was no similar transaction in the second quarter of 2017.

#### **Operating Expenses**

Research and development expenses were \$105,733 for the three months ended June 30, 2018, as compared to \$92,240 for the three months ended June 30, 2017. The increase was primarily due to an increase in fees for coders dedicated to software development enhancements and modifications.

General and administrative expenses for the three months ended June 30, 2018 and 2017 were \$(490,145) and \$1,352,028, respectively. The decrease was primarily due to a decrease in stock-based compensation expense of \$2,096,024 offset by an increase in marketing and labor related costs associated with growth of the Company. The significant decrease in stock-based compensation is attributed to the revaluation of our consultants' unvested restricted stock and stock options. The price of the Company's common stock decreased significantly from \$1.45 per share at March 31, 2018 to \$0.60 per share at June 30, 2018.

Other expense, net, for the three months ended June 30, 2018 amounted to \$(1,379,235), which represented a change in fair value of derivative liability of \$(1,444,164) offset by interest expense of \$58,788, and other expense of \$6,141. The amount of other expense, net, was lower in the second quarter of 2018 due to the change in fair value of derivative liability and \$526,871 of 2017 debt extinguishment.

***Six Months Ended June 30, 2018 compared to the Six Months Ended June 30, 2017.***

***Revenues***

Subscription revenues for the six months ended June 30, 2018 were \$16,242, compared to \$0 for the six months ended June 30, 2017. The increase in subscription revenues were primarily attributable to the Company's SaaS platform that was launched during the fourth quarter of fiscal 2017. There was no similar transaction in the first half of 2017.

***Operating Expenses***

Research and development expenses were \$235,733 for the six months ended June 30, 2018, as compared to \$181,840 for the six months ended June 30, 2017. The increase was primarily due to an increase in fees for coders dedicated to software development enhancements and modifications.

General and administrative expenses for the six months ended June 30, 2018 and 2017 were \$4,779,429 and \$1,970,028, respectively. The increase was primarily due to an increase in stock-based compensation expense of \$2,249,846 plus an increase in labor related costs, marketing, and professional services associated with growth of the Company. The significant increase in stock-based compensation was due to increase in the price of the Company's common stock. The price of the Company's common stock increased from \$0.10 per share at December 31, 2017 to \$0.60 per share at June 30, 2018, or an average of \$0.82 per share during the period ended June 30, 2018. In the prior period, the average price of the Company's common stock was \$0.18 per share.

Other expense, net, for the six months ended June 30, 2018 amounted to \$1,723,612, which represented a change in fair value of derivative liability of \$1,180,723, interest expense for amortization of debt discount of \$747,623, interest expense of \$262,721 on outstanding notes payable, \$171,739 of financing costs attributed to derivative liabilities, and other expense of \$12,380. These amounts were offset by a gain on extinguishment of debt, net of \$(651,574). The amount of other expense, net, was higher in 2018 due to the payoff off and conversion of debt that did not occur during the first quarter of 2017.

***Modified EBITDA***

In addition to our GAAP results, we present Modified EBITDA as a supplemental measure of our performance. However, Modified EBITDA is not a recognized measurement under GAAP and should not be considered as an alternative to net income, income from operations or any other performance measure derived in accordance with GAAP or as an alternative to cash flow from operating activities as a measure of liquidity. We define Modified EBITDA as net income (loss), plus interest expense, depreciation and amortization, stock-based compensation, financing costs and changes in fair value of derivative liability.

Management considers our core operating performance to be that which our managers can affect in any particular period through their management of the resources that affect our underlying revenue and profit generating operations that period. Non-GAAP adjustments to our results prepared in accordance with GAAP are itemized below. Readers are encouraged to evaluate these adjustments and the reasons we consider them appropriate for supplemental analysis. In evaluating Modified EBITDA, readers should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of Modified EBITDA should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items.

	For the Three months Ended		For the Six months Ended	
	June 30, 2018	June 30, 2017	June 30, 2018	June 30, 2017
Net income (loss)	\$ 1,771,886	\$ (2,111,765)	\$ (6,722,532)	\$ (2,968,585)
<b>Adjustments:</b>				
Stock Compensation Expense	(1,154,361)	942,463	3,456,593	1,206,737
Change in fair value of derivative liability	(1,444,164)	-	1,180,723	-
Amortization of debt discount	-	53,346	747,623	93,024
Interest expense	58,788	86,817	262,721	170,822
Financing costs	-	-	171,739	-
Depreciation	5,189	5,363	10,494	10,668
Gain on debt extinguishment, net	-	526,871	(651,574)	552,871
Total EBITDA adjustments	(2,534,548)	1,614,860	5,178,319	2,034,122
<b>Modified EBITDA</b>	<b>\$ (762,662)</b>	<b>\$ (496,905)</b>	<b>\$ (1,544,213)</b>	<b>\$ (934,463)</b>

The \$265,757 decrease in modified EBITDA for the three months ended June 30, 2018 compared to the same period in 2017, resulted from the increase in labor-related costs and marketing associated with growth of the Company.

The \$609,750 decrease in modified EBITDA for the six months ended June 30, 2018 compared to the same period in 2017, resulted from the increase in labor-related costs, marketing and professional services associated with growth of the Company.

We present Modified EBITDA because we believe it assists investors and analysts in comparing our performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our core operating performance. In addition, we use Modified EBITDA in developing our internal budgets, forecasts and strategic plan; in analyzing the effectiveness of our business strategies in evaluating potential acquisitions; and in making compensation decisions and in communications with our board of directors concerning our financial performance. Modified EBITDA has limitations as an analytical tool, which includes, among others, the following:

- Modified EBITDA does not reflect our cash expenditures, or future requirements, for capital expenditures or contractual commitments;
- Modified EBITDA does not reflect changes in, or cash requirements for, our working capital needs;
- Modified EBITDA does not reflect future interest expense, or the cash requirements necessary to service interest or principal payments, on our debts; and
- Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and the Modified EBITDA does not reflect any cash requirements for such replacements.

#### Liquidity and Capital Resources

##### Going Concern

We have incurred operating losses since inception and have negative cash flows from operations. As of June 30, 2018, we had a stockholders' deficit of \$2,180,711 and incurred a net loss of \$6,722,532. We also utilized \$1,889,395 in cash during the period ended June 30, 2018. As a result, our continuation as a going concern is dependent on our ability to obtain additional financing until we can generate sufficient cash flows from operations to meet our obligations. We intend to continue to seek additional debt or equity financing to continue our operations.

Our condensed consolidated financial statements have been prepared on a going concern basis, which implies we may not continue to meet our obligations and continue our operations for the next fiscal year. The continuation of our Company as a going concern is dependent upon our ability to obtain necessary debt or equity financing to continue operations until our Company begins generating positive cash flow.

There is no assurance that we will ever be profitable or that debt or equity financing will be available to us in the amounts, on terms, and at times deemed acceptable to us, if at all. The issuance of additional equity securities by us would result in a significant dilution in the equity interests of our current stockholders. Obtaining commercial loans, assuming those loans would be available, would increase our liabilities and future cash commitments. If we are unable to obtain financing in the amounts and on terms deemed acceptable to us, we may be unable to continue our business, as planned, and as a result may be required to scale back or cease operations for our business, the result of which would be that our stockholders would lose some or all of their investment. The consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result should we be unable to continue as a going concern.

#### ***Overview***

As of June 30, 2018, we had cash of \$1,420,798. We estimate our operating expenses for the next three months may continue to exceed any revenues we generate, and we may need to raise capital through either debt or equity offerings to continue operations. We are in the early stages of our business. We are required to fund growth from financing activities, and we intend to rely on a combination of equity and debt financings. Due to market conditions and the early stage of our operations, there is considerable risk that we will not be able to raise such financings at all, or on terms that are not overly dilutive to our existing stockholders. We can offer no assurance that we will be able to raise such funds. If we are unable to raise the funds we require for all of our planned operations, we may be forced to reallocate funds from other planned uses and may suffer a significant negative effect on our business plan and operations, including our ability to develop new products and continue our current operations. As a result, our business may suffer, and we may be forced to reduce or discontinue operations.

#### ***Cash Flows – Operating***

For the six months ended June 30, 2018, our cash flows used in operating activities amounted to \$1,889,395 compared to cash used during the six months ended June 30, 2017 of \$794,754. The change is due to an increase in business activity, which resulted in an additional consulting expenses, salary, and various operating expenses in the first half of 2018 compared to the first half of 2017. In addition, the Company paid accrued interest as part of the convertible debt payoffs in quarter one 2018 and paid down accounts payable.

#### ***Cash Flows – Financing***

Our cash provided by financing activities for the six months ended June 30, 2018 amounted to \$3,299,633, which represented \$2,978,500 of proceeds received from the issuances of our common stock, \$1,000,000 of proceeds from the issuance of shares of our common stock from the exercise of a put option, \$130,000 of proceeds from the issuance of convertible debt, \$34,133 of proceeds from the exercise of options, and \$22,000 of proceeds from the exercise of warrants, offset by \$845,000 of convertible debt payments and the repurchase of common stock equal to \$20,000. Our cash provided by financing activities for the six months ended June 30, 2017 amounted to \$805,000, which represented \$450,000 of proceeds received from the issuances of common stock, \$255,000 of proceeds received from the issuance of convertible Series A preferred stock, and \$100,000 of proceeds from the issuance of a convertible note. All shares of Series A preferred stock have been converted and we filed a Certificate of Elimination / Withdrawal with the state of Nevada.

#### ***Warrant Liability***

As of June 30, 2018, total liabilities are \$3,686,026, of which \$1,014,227 is attributable to certain outstanding warrants to purchase up to 1.7 million shares of common stock that are accounted for as derivative liability (see Note 7 Derivative Liability to the attached unaudited consolidated financial statements). Without the derivative liability, total liabilities would have been \$2,671,799, of which \$1,964,985 is related party debt.

As of June 30, 2018, the derivative liability of \$1,014,227 relates to outstanding warrants to purchase up to 1.7 million shares of common stock issued in December 2017 and January 2018. Due to certain adjustments that may be paid to the exercise price of the warrants if the Company issues or sells rights, options, or warrants to holders of its common stock (and not to the warrant holders) entitling them to subscribe for or purchase shares of its common stock at a price that is less than the closing price at the record date of such issuance, the warrants have been classified as a liability, as opposed to equity, in accordance with ASC 815-10 as it was determined that the warrants were not indexed to our common stock.

### Notes Payable

The Company has the following outstanding notes payable to related parties at June 30, 2018 that are due in the current year:

Payable to:	Issuance Date	Maturity Date	Interest Rate	Original Borrowing	Balance at June 30, 2018
Rory Cutaia (1)	December 1, 2015	August 1, 2018	12.0%	\$ 1,248,883	\$ 1,198,883
Rory Cutaia	December 1, 2015	August 1, 2018	12.0%	189,000	189,000
Past Director	December 1, 2015	April 1, 2017	12.0%	111,901	111,901
Rory Cutaia (2)	August 4, 2016	December 4, 2018	12.0%	343,326	343,326
Rory Cutaia	August 4, 2016	December 4, 2018	12.0%	121,875	121,875
<b>Total notes payable – related parties</b>					<b>\$ 1,964,985</b>

- (1) Per the terms of the note agreement, at Mr. Cutaia's discretion, he may convert up to \$374,665 of outstanding principal, plus accrued interest thereon, into shares of common stock at a conversion rate of \$0.07 per share.
- (2) A total of 30% of the principal of the note can be converted to shares of common stock at a conversion price of \$0.07 per share.

### Off Balance Sheet Arrangements

We have no off-balance sheet arrangements.

### Contractual Obligations

We are a smaller reporting company as defined by Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and are not required to provide the information under this Item.

### Critical Accounting Policies

Our financial statements have been prepared in accordance with accounting principles generally accepted in the United States, which require that we make certain assumptions and estimates that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of net revenue and expenses during each reporting period.

### Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reported periods. Significant estimates include valuation of derivative liability, valuation of debt and equity instruments, share-based compensation arrangements, and realization of deferred tax assets. Amounts could materially change in the future.

### **Derivative Financial Instruments**

The Company evaluates its financial instruments to determine if such instruments are derivatives or contain features that qualify as embedded derivatives. For derivative financial instruments that are accounted for as liabilities, the derivative instrument is initially recorded at its fair value and is then re-valued at each reporting date, with changes in the fair value reported in the consolidated statements of operations. The classification of derivative instruments, including whether such instruments should be recorded as liabilities or as equity, is evaluated at the end of each reporting period. Derivative instrument liabilities are classified in the balance sheet as current or non-current based on whether or not net-cash settlement of the derivative instrument could be required within 12 months of the balance sheet date.

The Company uses Level 2 inputs for its valuation methodology for the derivative liabilities as their fair values were determined by using a probability weighted average Black-Scholes-Merton pricing model based on various assumptions. The Company's derivative liabilities are adjusted to reflect fair value at each period end, with any increase or decrease in the fair value being recorded in results of operations as adjustments to fair value of derivatives.

### **Share-Based Payment**

The Company issues stock options, warrants exercisable for shares of common stock, common stock, and equity interests as share-based compensation to employees and non-employees.

The Company accounts for its share-based compensation to employees in accordance FASB ASC 718 "Compensation – Stock Compensation." Stock-based compensation cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as expense over the requisite service period.

The Company accounts for share-based compensation issued to non-employees and consultants in accordance with the provisions of FASB ASC 505-50 "Equity - Based Payments to Non-Employees." Measurement of share-based payment transactions with non-employees is based on the fair value of whichever is more reliably measurable: (a) the goods or services received; or (b) the equity instruments issued. The final fair value of the share-based payment transaction is determined at the performance completion date. For interim periods, the fair value is estimated, and the percentage of completion is applied to that estimate to determine the cumulative expense recorded.

The Company values stock compensation based on the market price on the measurement date. As described above, for employees this is the date of grant, and for non-employees, this is the date of performance completion.

The Company values stock options using the Black-Scholes option pricing model. Assumptions used in the Black-Scholes model to value options issued during the six months ended June 30, 2018 and 2017 are as follows:

	<b>Six Months Ended June 30,</b>	
	<b>2018</b>	<b>2017</b>
Risk-free interest rate	2.25% - 2.85%	1.76% - 1.93%
Average expected term (years)	5 years	5 years
Expected volatility	184% -190%	157%-160%
Expected dividend yield	-	-

The risk-free interest rate is based on rates established by the Federal Reserve Bank. The expected term represents the weighted-average period of time that share option awards are expected to be outstanding giving consideration to vesting schedules and historical participant exercise before. The Company uses the historical volatility of its common stock to estimate the future volatility for its common stock. The expected dividend yield is based on the fact that the Company has not customarily paid dividends in the past and does not expect to pay dividends in the future.



## Recently Issued Accounting Pronouncements

For a summary of our recent accounting policies, refer to Note 2 of our unaudited condensed consolidated financial statements included under Item 1 – Financial Statements in this Form 10-Q.

## ITEM 3 - QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

## ITEM 4 - CONTROLS AND PROCEDURES

### *Evaluation of Disclosure Controls and Procedures*

We maintain disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the “Exchange Act”), that are designed to ensure that information required to be disclosed in our reports under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and our principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

We carried out an evaluation under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were not effective as of June 30, 2018.

### *Changes in Internal Control Over Financial Reporting*

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended June 30, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II - OTHER INFORMATION

### ITEM 1 - LEGAL PROCEEDINGS

On April 24, 2018, EMA Financial, LLC, a New York limited liability company (“EMA”), commenced an action against us, styled *EMA Financial, LLC, a New York limited liability company, Plaintiff, against nFUSZ, Inc., Defendant*, United States District Court, Southern District of New York, case number 1:18-cv-03634-NRB. The Complaint sets forth four causes of action and seeks relief consisting of: (1) money damages, (2) injunctive relief, (3) liquidated damages; and declaratory relief. All of the claims stem from our refusal to honor EMA’s exercise notice in connection with a common stock purchase warrant that we had granted to it. We believe EMA’s allegations are entirely without merit.

The circumstances giving rise to the dispute are as follows: On or about December 5, 2017, we issued a warrant to EMA as part of the consideration we were required to provide in connection with a contemporaneous convertible loan EMA made to us. The loan, which was evidenced by a convertible Note, was for a term of one year. Our refusal to honor the warrant exercise notice was due to our good faith belief that EMA’s interpretation of the cashless exercise provision of the warrant was, *inter alia*, (i) contrary to our direct conversations and agreements made with EMA prior to, and during the preparation of the loan and warrant agreements; (2) wholly inconsistent with industry norms, standards, and practices; (3) was contrary to the cashless exercise method actually adopted by EMA’s co-lender in the same transaction; and (4) was the result of a single letter mistakenly transposed in the cashless exercise formula drafted by EMA which if adopted, would result in a gross and unintended windfall in favor of EMA and adverse to us. Moreover, as set forth in our response to EMA’s allegations, EMA’s interpretation of the cashless exercise provision would have resulted in it being issued more shares of our common stock than it would have received if it exercised the warrant for cash (instead of less), and more than the amount of shares reflected on the face of the warrant agreement itself. The loan underlying the transaction was repaid, in full, approximately three months after it was issued, on March 8, 2018, together with all accrued interest, prior to any conversion or attempted conversion of the Note.

On July 20, 2018, we filed an Answer to the Complaint, along with certain Affirmative Defenses, as well as Counterclaims seeking *inter alia*, to void the entire transaction for violation of New York's criminal usury laws and, alternatively, for reformation of the warrant conversion formula set forth in the Warrant Agreement so as to be consistent with the parties' intent and custom and practice in the industry. We intend to vigorously defend the action, as well as vigorously prosecute our counterclaims against EMA. The action is still pending.

We know of no other material pending legal proceedings to which we or any of our subsidiaries is a party or to which any of our assets or properties, or the assets or properties of any of our subsidiaries, are subject and, to the best of our knowledge, no adverse legal activity is anticipated or threatened. In addition, we do not know of any such proceedings contemplated by any governmental authorities.

## ITEM 2 - UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

### *Common Stock*

**Shares Issued for Services** – The Company issued common shares to vendors for services rendered and are expensed based on fair market value of the stock price at the date of issuance. For the six months ended June 30, 2018, the Company issued 4,790,181 shares of common stock to vendors and recorded stock compensation expense of \$2,627,417. The Company offered and sold the shares in reliance on the exemption from registration pursuant to Section 4(a)(2) of Securities Act of 1933, as amended (the "Securities Act").

**Shares Issued from Stock Subscription** – The Company issued stock subscription to 37 investors. For the six months ended June 30, 2018, the Company issued 17,459,067 common shares for net proceeds of \$2,978,500. The Company offered and sold the shares in reliance on the exemption from registration pursuant to Section 4(a)(2) of Securities Act. The proceeds were used to pay off debt and for operations.

**Shares Issued from Conversion of Note Payable** – During the period ended June 30, 2018, the Company issued 7,383,006 shares of common stock with a fair value of \$8,874,901 upon conversion of a note payable. 6,133,006 of the shares were valued and accounted for using a beneficial conversion feature when the notes were executed (see Notes 4 and 6). The Company offered and sold the shares in reliance on the exemption from registration pursuant to Section 4(a)(2) of Securities Act.

**Shares Issued for Accrued Salary** – On March 28, 2018, the Company converted the CEO's accrued salary of \$582,333 into 407,226 restricted shares of common stock at a price of \$1.43 per share, which represents the closing price of the Company's shares as reported on OTC Markets Group Inc. on March 28, 2018. The Company offered and sold the shares in reliance on the exemption from registration pursuant to Section 4(a)(2) of Securities Act.

**Shares Issued upon Exercise of Options** – During the six months ended June 30, 2018, a total of 487,620 warrants were exercised and 487,620 shares of common stock were issued at a weighted average exercise price of \$.07. The Company received \$34,133 as part of the transactions. The Company offered and sold the shares in reliance on the exemption from registration pursuant to Section 4(a)(2) of Securities Act. Proceeds were used for operations.

**Shares Issued from Exercise of Warrants** – During the six months ended June 30, 2018, a total of 1,981,000 warrants were exercised and 1,704,325 shares of common stock were issued at a weighted average exercise price of \$.15. The Company received \$22,000 as part of the transactions. The Company offered and sold the shares in reliance on the exemption from registration pursuant to Section 4(a)(2) of Securities Act. Proceeds were used for operations.

## ITEM 3 - DEFAULTS UPON SENIOR SECURITIES

None.

#### ITEM 4 - MINE SAFETY DISCLOSURES

Not applicable.

#### ITEM 5 - OTHER INFORMATION

None.

#### ITEM 6 - EXHIBITS

The following exhibits are filed as part of, or incorporated by reference into this Report:

<u>Exhibit No.</u>	<u>Description</u>
2.1	<a href="#"><u>Share Exchange Agreement dated as of August 11, 2014 by and among Global System Designs, Inc., bBooth (USA), Inc. (formerly bBooth, Inc.), and the stockholders of bBooth (USA), Inc. (formerly bBooth, Inc.), which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on August 15, 2014, and is incorporated herein by reference thereto.</u></a>
3.1	<a href="#"><u>Articles of Incorporation as filed with the Secretary of State of the State of Nevada on November 27, 2012, which was filed as Exhibit 3.1 to our Registration Statement on Form S-1 (File No. 333-187782) filed with the SEC on April 8, 2013, and is incorporated herein by reference thereto.</u></a>
3.2	<a href="#"><u>Bylaws, which was filed as Exhibit 3.2 to our Registration Statement on Form S-1 (File No. 333-187782) filed with the SEC on April 8, 2013, and is incorporated herein by reference thereto.</u></a>
3.3	<a href="#"><u>Certificate of Change as filed with the Secretary of State of the State of Nevada on October 6, 2014, which was filed as Exhibit 3.3 to our Current Report on Form 8-K filed with the SEC on October 22, 2014, and is incorporated herein by reference thereto.</u></a>
3.4	<a href="#"><u>Articles of Merger as filed with the Secretary of State of the State of Nevada on October 6, 2014, which was filed as Exhibit 3.4 to our Current Report on Form 8-K filed with the SEC on October 22, 2014, and is incorporated herein by reference thereto.</u></a>
3.5	<a href="#"><u>Articles of Merger as filed with the Secretary of State of the State of Nevada on April 4, 2017, which was filed as Exhibit 3.5 to our Current Report on Form 8-K filed with the SEC on April 24, 2017, and is incorporated herein by reference thereto.</u></a>
3.6	<a href="#"><u>Certificate of Correction as filed with the Secretary of State of the State of Nevada on April 17, 2017, which was filed as Exhibit 3.6 to our Current Report on Form 8-K filed with the SEC on April 24, 2017, and is incorporated herein by reference thereto.</u></a>
4.1	<a href="#"><u>Common Stock Purchase Warrant (First Warrant) dated September 15, 2017, issued to Kodiak Capital Group, LLC, which was filed as Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on October 2, 2017, and is incorporated herein by reference thereto.</u></a>
4.2	<a href="#"><u>Common Stock Purchase Warrant (Second Warrant) dated September 15, 2017, issued to Kodiak Capital Group, LLC, which was filed as Exhibit 4.2 to our Current Report on Form 8-K filed with the SEC on October 2, 2017, and is incorporated herein by reference thereto.</u></a>
4.3	<a href="#"><u>Common Stock Purchase Warrant (Third Warrant) dated September 15, 2017, issued to Kodiak Capital Group, LLC, which was filed as Exhibit 4.3 to our Current Report on Form 8-K filed with the SEC on October 2, 2017, and is incorporated herein by reference thereto.</u></a>
4.4	<a href="#"><u>Promissory Note (Commitment Note), dated September 15, 2017, issued by the Company in favor of Kodiak Capital Group, LLC, which was filed as Exhibit 4.4 to our Current Report on Form 8-K filed with the SEC on October 2, 2017, and is incorporated herein by reference thereto.</u></a>
4.5	<a href="#"><u>Promissory Note (First Note), dated September 15, 2017, issued by the Company in favor of Kodiak Capital Group, LLC, which was filed as Exhibit 4.5 to our Current Report on Form 8-K filed with the SEC on October 2, 2017, and is incorporated herein by reference thereto.</u></a>
4.6	<a href="#"><u>Promissory Note (Second Note), dated September 15, 2017, issued by the Company in favor of Kodiak Capital Group, LLC, which was filed as Exhibit 4.6 to our Current Report on Form 8-K filed with the SEC on October 2, 2017, and is incorporated herein by reference thereto.</u></a>
4.7	<a href="#"><u>Form of Warrant Certificate dated March 20, 2015, which was filed as Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on March 27, 2015, and is incorporated herein by reference thereto.</u></a>
4.8	<a href="#"><u>12% Secured Convertible Note dated December 1, 2015, issued by the Company in favor of Rory J. Cutaia, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on December 7, 2015, and is incorporated herein by reference thereto.</u></a>
4.9	<a href="#"><u>12% Unsecured Convertible Note dated December 1, 2015, issued by the Company in favor of Rory J. Cutaia, which was filed as Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on December 7, 2015, and is incorporated herein by reference thereto.</u></a>
4.10	<a href="#"><u>12% Unsecured Note dated December 1, 2015, issued by the Company in favor of Audit Prep Services, LLC, which was filed as Exhibit 10.4 to our Current Report on Form 8-K filed with the SEC on December 7, 2015, and is incorporated herein by reference thereto.</u></a>

- 4.11 [Form of 12% Secured Convertible Note dated April 4, 2016, issued by the Company in favor of Rory J. Cutaia, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on April 11, 2016, and is incorporated herein by reference thereto.](#)
- 4.12 [Form of Warrant Certificate dated April 4, 2016 issued to Rory J. Cutaia, which was filed as Exhibit 10.4 to our Current Report on Form 8-K filed with the SEC on April 11, 2016, and is incorporated herein by reference thereto.](#)
- 4.13 [Form of 12% Unsecured Convertible Note dated April 4, 2016, issued by the Company in favor of Rory J. Cutaia, which was filed as Exhibit 10.5 to our Current Report on Form 8-K filed with the SEC on April 11, 2016, and is incorporated herein by reference thereto.](#)
- 4.14 [Form of 12% Unsecured Convertible Note dated April 4, 2016, issued by the Company in favor of Oceanside Strategies, Inc., which was filed as Exhibit 10.6 to our Current Report on Form 8-K filed with the SEC on April 11, 2016, and is incorporated herein by reference thereto.](#)
- 4.15 [Form of Warrant Certificate dated April 4, 2016 issued to Oceanside Strategies, Inc., which was filed as Exhibit 10.7 to our Current Report on Form 8-K filed with the SEC on April 11, 2016, and is incorporated herein by reference thereto.](#)
- 4.16 [Amendment to 12% Unsecured Convertible Note dated December 30, 2016, issued by the Company in favor of Oceanside Strategies, Inc., which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on January 9, 2017, and is incorporated herein by reference thereto.](#)
- 4.17 [Warrant Certificate dated December 30, 2016 issued to Oceanside Strategies, Inc., which was filed as Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on January 9, 2017, and is incorporated herein by reference thereto.](#)
- 4.18 [Certificate of Designations, Preferences and Rights of the Series A Convertible Preferred Stock as filed with the Secretary of State of the State of Nevada on February 13, 2017, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on February 21, 2017, and is incorporated herein by reference thereto.](#)
- 4.19 [Amendment to Certificate of Designations, Preferences and Rights of the Series A Convertible Preferred Stock as filed with the Secretary of State of the State of Nevada on July 28, 2017, which was filed as Exhibit 10.37 to our Quarterly Report on Form 10-Q filed with the SEC on August 10, 2017, and is incorporated herein by reference thereto.](#)
- 4.20 [8% Unsecured Convertible Note dated December 5, 2017 issued by the Company in favor of EMA Financial, LLC, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on December 14, 2017, and is incorporated herein by reference thereto.](#)
- 4.21 [Common Stock Purchase Warrant dated December 5, 2017 issued to EMA Financial, LLC, which was filed as Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on December 14, 2017, and is incorporated herein by reference thereto.](#)
- 4.22 [8% Unsecured Convertible Note dated December 5, 2017 issued by the Company in favor of Auctus Fund, LLC, which was filed as Exhibit 10.5 to our Current Report on Form 8-K filed with the SEC on December 14, 2017, and is incorporated herein by reference thereto.](#)
- 4.23 [Common Stock Purchase Warrant dated December 5, 2017 issued to Auctus Fund, LLC, which was filed as Exhibit 10.6 to our Current Report on Form 8-K filed with the SEC on December 14, 2017, and is incorporated herein by reference thereto.](#)
- 4.24 [8% Unsecured Convertible Note dated December 13, 2017 issued by the Company in favor of PowerUp Lending Group, LTD., which was filed as Exhibit 10.8 to our Current Report on Form 8-K filed with the SEC on December 14, 2017, and is incorporated herein by reference thereto.](#)
- 4.25 [8% Unsecured Convertible Note dated January 11, 2018 issued by the Company in favor of EMA Financial, LLC, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on January 26, 2018, and is incorporated herein by reference thereto.](#)
- 4.26 [Common Stock Purchase Warrant dated January 11, 2018 issued to EMA Financial, LLC, which was filed as Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on January 26, 2018, and is incorporated herein by reference thereto.](#)
- 4.25 [8% Unsecured Convertible Note dated January 10, 2018 issued by the Company in favor of Auctus Fund, LLC, which was filed as Exhibit 10.5 to our Current Report on Form 8-K filed with the SEC on January 26, 2018, and is incorporated herein by reference thereto.](#)

- 4.26 [Common Stock Purchase Warrant dated January 10, 2018 issued to Auctus Fund, LLC, which was filed as Exhibit 10.6 to our Current Report on Form 8-K filed with the SEC on January 26, 2018, and is incorporated herein by reference thereto.](#)
- 4.27\* [Amendment to Certificate of Designations, Preferences and Rights of the Series A Convertible Preferred Stock as filed with the Secretary of State of the State of Nevada on September 1, 2017.](#)
- 4.28\* [Certificate of Withdrawal of Certificate of Designation of Series A Convertible Preferred Stock as filed with the Secretary of State of the State of Nevada on August 10, 2018.](#)
- 10.1 [2014 Stock Option Plan, which is filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on October 22, 2014, and is incorporated herein by reference thereto.](#)
- 10.3 [Employment Agreement dated November 1, 2014, by and between the Company and Rory Cutaia, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on November 24, 2014, and is incorporated herein by reference thereto.](#)
- 10.4 [Secured Promissory Note dated December 11, 2014 issued by Songstagram, Inc. in favor of the Company, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on December 17, 2014, and is incorporated herein by reference thereto.](#)
- 10.5 [Secured Promissory Note dated December 11, 2014 issued by Rocky Wright in favor of the Company, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on December 17, 2014, and is incorporated herein by reference thereto.](#)
- 10.6 [Security Agreement dated December 11, 2014 executed by Songstagram, Inc. in favor of the Company, which was filed as Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on December 17, 2014, and is incorporated herein by reference thereto.](#)
- 10.7 [Security Agreement dated December 11, 2014 executed Rocky Wright in favor of the Company, which was filed as Exhibit 10.4 to our Current Report on Form 8-K filed with the SEC on December 17, 2014, and is incorporated herein by reference thereto.](#)
- 10.8 [Acquisition Agreement dated January 20, 2015 among Songstagram, Inc., Rocky Wright, and us, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on January 26, 2015, and is incorporated herein by reference thereto.](#)
- 10.9 [Surrender of Collateral, Consent to Strict Foreclosure and Release Agreement dated January 20, 2015, by and between Songstagram, Inc. and the Company, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on January 26, 2015, and is incorporated herein by reference thereto.](#)
- 10.10 [Form of Termination Agreement and Release dated January 20, 2015, which was filed as Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on January 26, 2015, and is incorporated herein by reference thereto.](#)
- 10.11 [Settlement and Release Agreement dated February 6, 2015, by and among Songstagram, Inc., Jeff Franklin, and the Company, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on March 9, 2015, and is incorporated herein by reference thereto.](#)
- 10.12 [Engagement letter dated March 20, 2015, by and among DelMorgan Group LLC, Globalist Capital, LLC, and the Company, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on March 27, 2015, and is incorporated herein by reference thereto.](#)
- 10.13 [Form of Note Purchase Agreement dated March 20, 2015, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on March 27, 2015, and is incorporated herein by reference thereto.](#)
- 10.14 [Security Agreement issued by the Company in favor of Rory J. Cutaia, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on December 7, 2015, and is incorporated herein by reference thereto.](#)
- 10.15 [Form of Stock Repurchase Agreement, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on February 16, 2016, and is incorporated herein by reference thereto.](#)
- 10.16 [Form of Private Placement Subscription Agreement, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on April 11, 2016, and is incorporated herein by reference thereto.](#)

- 10.17 [Form of Security Agreement issued by the Company in favor of Rory J. Cutaia, which was filed as Exhibit 10.3 to our Current Report on Form 8-K filed with the SEC on April 11, 2016, and is incorporated herein by reference thereto.](#)
- 10.18 [Form of Private Placement Subscription Agreement, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on May 19, 2016, and is incorporated herein by reference thereto.](#)
- 10.19 [Form of Option Agreement for Messrs. Geiskopf and Cutaia, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on May 19, 2016, and is incorporated herein by reference thereto.](#)
- 10.20 [Term Sheet dated July 12, 2016, between Nick Cannon and the Company, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on May 19, 2016, and is incorporated herein by reference thereto.](#)
- 10.21 [Form of Stock Option Agreement between Jeffrey R. Clayborne and the Company, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on May 19, 2016, and is incorporated herein by reference thereto.](#)
- 10.22 [Form of Consulting Agreement dated August 8, 2016, by and between International Monetary and the Company, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on August 15, 2016, and is incorporated herein by reference thereto.](#)
- 10.23 [Form of Private Placement Subscription Agreement, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on September 19, 2016, and is incorporated herein by reference thereto.](#)
- 10.24 [Securities Purchase Agreement dated February 13, 2017, by and between the Company and certain purchasers named therein, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on February 21, 2017, and is incorporated herein by reference thereto.](#)
- 10.25 [Equity Purchase Agreement, as corrected, dated September 15, 2017, by and between the Company and Kodiak Capital Group, LLC, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on October 27, 2017, and is incorporated herein by reference thereto.](#)
- 10.26 [Registration Rights Agreement dated September 15, 2017, by and between the Company and Kodiak Capital Group, LLC, which was filed as Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on October 2, 2017, and is incorporated herein by reference thereto.](#)
- 10.27 [Securities Purchase Agreement dated December 5, 2017, by and between the Company and EMA Financial, LLC, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on December 14, 2017, and is incorporated herein by reference thereto.](#)
- 10.28 [Securities Purchase Agreement, dated December 5, 2017, by and between the Company and Auctus Fund, LLC, which was filed as Exhibit 10.4 to our Current Report on Form 8-K filed with the SEC on December 14, 2017, and is incorporated herein by reference thereto.](#)
- 10.29 [Securities Purchase Agreement dated December 13, 2017, by and between the Company and PowerUp Lending Group, LTD, which was filed as Exhibit 10.7 to our Current Report on Form 8-K filed with the SEC on December 14, 2017, and is incorporated herein by reference thereto.](#)
- 10.30 [Securities Purchase Agreement dated January 11, 2018, by and between the Company and EMA Financial, LLC, which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on January 26, 2018, and is incorporated herein by reference thereto.](#)
- 10.31 [Securities Purchase Agreement, dated January 10, 2018, by and between the Company and Auctus Fund, LLC, which was filed as Exhibit 10.4 to our Current Report on Form 8-K filed with the SEC on January 26, 2018, and is incorporated herein by reference thereto.](#)
- 10.32 [SuiteCloud Developer Network Agreement, dated January 2, 2018, by and between the Company and Oracle America, Inc., which was filed as Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on April 23, 2018, and is incorporated herein by reference thereto.](#)
- 10.33\* [Lease Agreement, dated June 22, 2017, by and between La Park La Brea B LLC and the Company.](#)
- 10.34\* [Renewal Amendment of Lease Agreement, dated May 1, 2018, by and between La Park La Brea B LLC and the Company.](#)
- 10.35\* [Marketo LaunchPoint Accelerate Program Agreement, dated April 1, 2018, by and between the Company and Marketo, Inc.](#)
- 31.1\* [Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 31.2\* [Certification of Principal Financial Officer and Principal Accounting Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 32.1\* [Certification of Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)
- 32.2\* [Certification of Principal Financial Officer and Principal Accounting Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)
- 101.INS\* XBRL Instance Document
- 101.SCH\* XBRL Taxonomy Extension Schema
- 101.CAL\* XBRL Taxonomy Extension Calculation Linkbase
- 101.DEF\* XBRL Taxonomy Extension Definition Linkbase
- 101.LAB\* XBRL Taxonomy Extension Label Linkbase
- 101.PRE\* XBRL Taxonomy Extension Presentation Linkbase

\* Filed herewith.

**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.

**nFÜSZ, INC.**

August 14, 2018

By: /s/ Rory Cutaia  
Rory J. Cutaia  
President, Chief Executive Officer,  
Secretary, and Director  
(Principal Executive Officer)

August 14, 2018

By: /s/ Jeff Clayborne  
Jeff Clayborne  
Chief Financial Officer  
(Principal Accounting Officer)







BARBARA K. CEGAVSKE  
 Secretary of State  
 202 North Carson Street  
 Carson City, Nevada 89701-4201  
 (775) 684-3708  
 Website: www.nvsos.gov



\*150303\*

Filed in the office of <i>Edward L. Lynch</i>	Document Number <b>20170376954-54</b>
Barbara K. Cegavsk Secretary of State State of Nevada	Filing Date and Time <b>09/01/2017 11:31 AM</b>
	Entity Number <b>E0609422012-3</b>

**Amendment to  
 Certificate of Designation  
 After Issuance of Class or Series**  
 (PURSUANT TO NRS 78.1955)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

**Certificate of Amendment to Certificate of Designation  
 For Nevada Profit Corporations  
 (Pursuant to NRS 78.1955 - After Issuance of Class or Series)**

1. Name of corporation:

nFusz, Inc.

2. Stockholder approval pursuant to statute has been obtained.

3. The class or series of stock being amended:

Series A Convertible Preferred Stock

4. By a resolution adopted by the board of directors, the certificate of designation is being amended as follows or the new class or series is:

A. Additional Sections to Section 3 (Dividends) of the Filed Certificate.  
 Sections 3(Z-a), (Z-b), and (Z-c), respectively, and shall relate only to the first 131,250 Preferred Shares that are sold and issued subsequently to the date of this Amendment No 2.

\* \* \*

5. Effective date of filing: (optional)

(must not be later than 90 days after the certificate is filed)

6. Signature: (required)

nFUSZ, INC.

X

By: *[Signature]*  
 Name: Mark J. Cyprian  
 Title: Chief Executive Officer

Signature of Officer

Filing Fee: \$175.00

**IMPORTANT:** Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

*This form must be accompanied by appropriate fees.*

Nevada Secretary of State NRS Amend Designation - After  
 Revised: 1-5-15

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(Z-a) From and after August 31, 2017 (the "**Initial Issuance Date**"), each holder of a Preferred Share (each, a "**Holder**" and collectively, the "**Holder**s") shall be entitled to receive dividends (the "**Dividends**"), which Dividends shall be paid by the Company out of funds legally available therefor, payable, subject to the conditions and other terms hereof, in shares of Common Stock or cash on the Stated Value (as defined below) of such Preferred Share at the Dividend Rate (as defined below), which shall be cumulative and shall continue to accrue whether or not declared and whether or not in any fiscal year there shall be net profits or surplus available for the payment of dividends in such fiscal year. Dividends on the Preferred Shares shall commence accumulating on the Initial Issuance Date and shall be computed on the basis of a 365-day year and actual days elapsed. Dividends shall be payable on the following dates (each, a "**Dividend Date**"): (i) the first (1<sup>st</sup>) Dividend Date being October 5, 2017; and (ii) and each subsequent Dividend Date shall be solely in connection with and concurrently with Installment Redemption Payments. Notwithstanding anything to the contrary contained herein, unless otherwise agreed to by the Company and the Holders, the Company shall pay Cash Dividends (as defined below) to the Holders on the first (1<sup>st</sup>) Dividend Date.

(Z-b) Dividends shall be payable on each Dividend Date, to the Holders of record of the Preferred Shares on the applicable Dividend Date, in shares of Common Stock (the "**Dividend Shares**") so long as there has been no Equity Conditions Failure

and so long as the delivery of Dividend Shares would not violate the provisions of Section 4; provided, however, that the Company may, at its option, pay Dividends on any Dividend Date in cash (the "**Cash Dividends**") or in a combination of Cash Dividends and, so long as there has been no Equity Conditions Failure, Dividend Shares. The Company shall deliver a written notice (each, a "**Dividend Election Notice**") to each Holder two (2) Trading Days prior to each Dividend Date (the date such notice is delivered to all of the Holders, the "**Dividend Notice Date**"), which notice (1) notifies the then-record Holders that the Company has elected to pay the accrued Dividends as Cash Dividends, Dividend Shares, or as a combination of Dividend Shares and Cash Dividends and, in any event, specifies the amount of the to-be-paid Dividends, if any, as Cash Dividends and the amount of the to-be-paid Dividends, if any, as Dividend Shares and (2) certifies that there has been no Equity Conditions Failure as of such time, if the Company has elected to pay any portion of the to-be-paid Dividends as Dividend Shares. Notwithstanding anything herein to the contrary, if no Equity Conditions Failure has occurred as of the Dividend Notice Date but an Equity Conditions Failure occurs at any time prior to the date on which a to-be-paid Dividend Shares are to be issued, (A) the Company shall provide each Holder with a subsequent notice to that effect and (B) unless such Holder waives the Equity Conditions Failure, such to-be-paid Dividends shall be paid as Cash Dividends. Dividends that are to be paid to each Holder in Dividend Shares shall be paid in a number of fully paid and non-assessable shares (rounded to the nearest whole share, with 0.50 or more of a share being rounded up to the nearest whole share and 0.49 or less of a share being rounded down to the nearest whole share) of Common Stock equal to the quotient of (1) the amount of Dividends payable to such Holder on such Dividend Date less any Cash Dividends paid and (2) the lesser of (i) the Redemption Price in effect on the applicable Dividend Date, and (ii) the VWAP on the Trading Day immediately preceding the Dividend Date.

(Z-c) When any Dividend Shares are to be paid to any Holder, the Company shall (i) (A) provided that (x) the Company's transfer agent (the "**Transfer Agent**") is participating in the Depository Trust Company ("DTC") Fast Automated Securities Transfer Program and (y) either a Registration Statement for the resale by the applicable Holder of the Dividend Shares or such Dividend Shares to be so issued are otherwise eligible for resale pursuant to Rule 144 (as defined in the Securities Purchase Agreement), credit such aggregate number of Dividend Shares to which such Holder shall be entitled to such Holder's or its designee's balance account with DTC through its Deposit and Withdrawal at Custodian system, or (B) if either of the immediately preceding clauses (x) or (y) is not satisfied, issue and deliver on the applicable Dividend Date, to the address set forth in the register maintained by the Company for such purpose pursuant to the Securities Purchase Agreement or to such address as specified by such Holder in writing to the Company at least two (2) Business Days prior to the applicable Dividend Date, a certificate, registered in the name of such Holder or its designee, for the number of Dividend Shares to which such Holder shall be entitled and (ii) with respect to each such payment of a Dividend, pay to such Holder, in cash by wire transfer of immediately available funds, the amount of any Cash Dividend. The Company shall pay any and all taxes that may be payable with respect to the issuance and delivery of Dividend Shares.

B. Amendment No. 1 to Section 5(W-b) (Mandatory Installment Redemptions; Triggering Events) of the Filed Certificate.

The first sentence of Section 5(W-b) of the Filed Certificate is hereby stricken in its entirety and replaced with the following:

"Solely in respect of the 189,000 Preferred Shares that were issued on February 13, 2017, and are issued and outstanding as of August 28, 2017: beginning on the earlier of the effectiveness of a Registration Statement and August 28, 2017, and so long as any of such Preferred Shares are outstanding, with respect to any Holder, the Company shall redeem Thirty-one Thousand Five Hundred Dollars (\$31,500) of the outstanding amount of such Preferred Shares and any accrued but unpaid Dividends thereon on the first (1<sup>st</sup>) Business Day of each week (each, an "**Installment Redemption Payment**") for six (6) consecutive weeks."

The reference to "three Trading Days" in the second paragraph of Subsection 5(W-b(i)) is hereby stricken and replaced with "one Trading Day."

C. Amendment No. 1 to Section 5(X-b) (Mandatory Installment Redemptions: Triggering Events) of the Filed Certificate.

The first sentence of Section 5(X-b) of the Filed Certificate is hereby stricken in its entirety and replaced with the following:

"Solely in respect of the 52,500 Preferred Shares that were issued on July 7, 2017, and are issued and outstanding as of the date of this Amendment No. 2: beginning on the earlier of the effectiveness of a Registration Statement and January 8, 2018, and so long as any of such Preferred Shares are outstanding, with respect to any Holder, the Company shall redeem Twenty-six Thousand Two Hundred Fifty Dollars (\$26,250) of the outstanding amount of such Preferred Shares and any accrued but unpaid Dividends thereon on the first (1<sup>st</sup>) Business Day of each week (each, an "**Installment Redemption Payment**") for two (2) consecutive weeks."

The reference to "three Trading Days" in the second paragraph of Subsection 5(X-b(i)) is hereby stricken and replaced with "one Trading Day."

D. Amendment No. 1 to Section 5(Y-b) (Mandatory Installment Redemptions: Triggering Events) of the Filed Certificate.

The reference to "three Trading Days" in the second paragraph of Subsection 5(Y-b(i)) is hereby stricken and replaced with "one Trading Day."

E. Additional Section to Section 5 (Mandatory Installment Redemptions: Triggering Events) of the Filed Certificate. Section 5(Z-b) shall relate only to first 131,250 Preferred Shares that are sold and issued subsequently to the date of this Amendment No. 2.

(Z-b) Mandatory Installment Redemption.

(i) Beginning on the earlier of the effectiveness of a Registration Statement and February 28, 2018, and so long as any Preferred Shares are outstanding, with respect to any Holder, the Company shall redeem Twenty-six Thousand Two Hundred Fifty Dollars (\$26,250) of the outstanding amount of Preferred Shares and any accrued but unpaid Dividends thereon on the first (1<sup>st</sup>) Business Day of each week (each, an "**Installment Redemption Payment**") for five (5) consecutive weeks. Each Installment Redemption Payment shall be made, at the Company's option (subject to the Company's compliance with the

Equity Conditions (*i.e.*, there is no Equity Conditions Failure)) in (i) cash at a price equal to the product of (A) the applicable Installment Redemption Payment multiplied by (B) the Redemption Premium or (ii) in shares of Common Stock (the "**Installment Redemption Shares**") at a price equal to the product of (A) the applicable Installment Redemption Payment multiplied by (B) the Redemption Premium divided by the lesser of (x) the Redemption Price (subject to adjustment for any share dividend, share split, share combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock) or (y) the VWAP during the period commencing five (5) Trading Days prior to the Installment Redemption Payment (the "**Installment Redemption Price**"). Notwithstanding the foregoing, the Holder shall have the option to demand payment of one (1) Installment Redemption Payment in shares of Common Stock at price equal to the Installment Redemption Price, in lieu of the receipt of cash; provided, that the Holder shall give the Company at least one (1) week's notice prior to the applicable Installment Redemption Payment. In the event that the Company elects to not pay an Installment Redemption Payment in cash and the Equity Conditions are not met (*i.e.*, there is an Equity Conditions Failure), then each Holder shall be entitled to the redemption of the applicable Installment Redemption Payment at a price equal to the Triggering Event Redemption Price until such time that the Equity Conditions Failure is cured. For the avoidance of doubt, if Holder defers the receipt of Installment Redemption Shares due to the limitations set forth in Section 4, Holder shall remain entitled to such shares as originally calculated, *i.e.*, any weekly VWAP increase subsequent to the original Installment Redemption Payment shall not decrease the amount of shares due to the Holder. However, if Holder defers the receipt of Installment Redemption Shares due to the limitations set forth in Section 4 and any VWAP for the five (5) consecutive Trading Days subsequent to the original Installment Redemption Date decreases (the "**Subsequent Installment Redemption Payment**"), then Holder shall receive the Installment Redemption Shares at a price equal to the VWAP during any Subsequent Installment Redemption Payment. Additionally, if Holder defers only a portion of the Installment Redemption Shares due to the limitations set forth in Section 4, then such portion shall be subject to the pricing period of the Subsequent Installment Redemption Payment.

In the event that the Installment Redemption Price from the immediately prior Installment Redemption Payment is greater than the VWAP for the five (5) consecutive Trading Days following such Installment Redemption Payment (the "**Make-Whole VWAP Period**"), which shall be calculated in the same manner as the VWAP and which precedes the current Installment Redemption Payment, then the Company shall make one make-whole payment to such Holder in additional shares of Common Stock ("**Installment Redemption Price Make-Whole Shares**") to compensate the Holder for the loss of value for the immediately previous Installment Redemption Payment. The number of Installment Redemption Price Make-Whole Shares shall be determined by the quotient of (A) the Installment Redemption Payment (including the Redemption Premium) divided by (B) the VWAP calculated during the Make-Whole VWAP Period (the "**Make-Whole VWAP Price**"); and then subtracting from such result the number of shares of Common Stock issued in connection with the Installment Redemption Payment. Such Installment Redemption Price Make-Whole Shares shall be

delivered to Holder by no later than the next Installment Redemption Payment or, if such Installment Redemption Price Make-Whole Shares relates to the final Installment Redemption Payment, then Installment Redemption Price Make-Whole Shares shall be delivered to Holder by no later than one Trading Day following the last Trading Day of the relevant Make-Whole VWAP Period. For the avoidance of doubt, the Make-Whole VWAP Period for the final Installment Redemption Payment shall be the five (5) consecutive Trading Days following such final Installment Redemption Payment.

The Company's obligations to deliver the Installment Redemption Price Make-Whole Shares shall continue even though a Triggering Event has occurred (for the avoidance of doubt, in such event the Redemption Price that is utilized shall be the Triggering Event Redemption Price in lieu of the Installment Redemption Price). For an example of the issuance of Installment Redemption Price Make-Whole Shares, see **Exhibit I** attached hereto. For the avoidance of doubt, if Holder defers the receipt of Installment Redemption Price Make-Whole Shares due to the limitations set forth in Section 4, Holder shall remain entitled to the amount of the Installment Redemption Price Make-Whole Shares as originally calculated, *i.e.*, any weekly VWAP increase subsequent to the Make-Whole VWAP Period shall not decrease the amount of Installment Redemption Price Make-Whole Shares due to the Holder. However, if Holder defers the receipt of Installment Redemption Price Make-Whole Shares due to the limitations set forth in Section 4 and any VWAP for the five (5) consecutive Trading Days subsequent to the Make-Whole VWAP Period decreases (the "**Subsequent Make-Whole VWAP Period**"), then Holder shall receive the Installment Redemption Price Make-Whole Shares at a price equal to the VWAP during any Subsequent Make-Whole Period. Additionally, if Holder defers only a portion of the Installment Redemption Price Make-Whole Shares due to the limitations set forth in Section 4, then such portion shall be subject to the pricing period of the Subsequent Make-Whole VWAP Period. Further, the Holder may demand the receipt of any portion of the Installment Redemption Price Make-Whole Shares prior to the receipt of the next Installment Redemption Payment. In such event, the Company shall deliver a separate Redemption Notice to the Holder with respect to the next Installment Redemption Payment.

(ii) On the Business Day immediately prior to each Installment Redemption Payment, the Company shall deliver to each Holder a written notice of each Installment Redemption Payment by facsimile or electronic mail in the form attached hereto as **Exhibit II**, which shall (A) certify that there has been no Equity Conditions Failure and (B) state the aggregate amount of the Preferred Shares which is being redeemed in such Installment Redemption Payment from such Holder and all of the other Holders of the Preferred Shares pursuant to this Section 5(b). Redemptions made pursuant to this Section 5(b) shall be made in accordance with Section 5(d).

(iii) Pursuant to the limitations set forth in Section 4, each Holder may defer all or any portion of any Installment Redemption Payment (including without limitation, any Installment Redemption Price Make-Whole Shares) and have it be paid simultaneously with any future Installment Redemption

Payment(s) or on any other date. For the avoidance of doubt, if a Holder defers all or any portion of any Installment Redemption Payment (including without limitation, any Installment Redemption Price Make-Whole Shares) due to the limitations set forth in Section 4, such deferral alone shall not be deemed a Triggering Event.

F. Application of Subsections 5(c) and 5(d) of Section 5 and Amendment No. 1 of Certain Other Subsections of Section 5 (Mandatory Installment Redemptions; Triggering Events) of the Filed Certificate. Except as noted hereinbelow, Subsections 5(c) and 5(d) of Section 5 of the Filed Certificate shall apply both to the 372,750 Preferred Shares that are issued and outstanding as of the date of this Amendment No. 2 and to those Preferred Shares that are sold and issued subsequently to the date of this Amendment No. 2, in each case without amendment or modification hereby.

F-1 Subsection 5(c)(i)(G) is hereby stricken in its entirety and replaced with the following:

“G. the Company, either (A) fails to deliver the required number of shares of Common Stock within one (1) Trading Day after the applicable Installment Redemption Payment; (B) fails to deliver the required number of Installment Redemption Price Make-Whole Shares within one (1) Trading Day of the payment date provided in Section 5(W-b)(i), 5(X-b)(i), 5(Y-b)(i), or 5(Z-b)(i), as relevant, or (C) fails to remove any restrictive legend on any certificate for any shares of Common Stock issued to such Holder upon redemption of any Preferred Shares acquired by such Holder as and when required with respect to such securities in accordance with applicable federal securities laws, and any such failure remains uncured for at least one (1) Trading Day;”

F-2 The following phrase is hereby added at the end of Subsection 5(c)(i)(N):

“, or unless such breach relates to a breach of Subsection 5(c)(i)(G), in which event, the five (5) consecutive Trading Day-period shall be reduced to one Trading Day;”

G. Application of Subsection 5(qq) of Section 5 (Certain Defined Terms) of the Filed Certificate. “Subscription Date: as defined in Subsection 5(qq) of Section 5 of the Filed Certificate shall mean (i) February 13, 2017, as to the 189,000 Preferred Shares that are issued and outstanding as of the date of this Amendment No. 2, (ii) July 7, 2017, as to the 52,500 Preferred Shares that are issued and outstanding as of the date of this Amendment No. 2, (iii) July 28, 2017, as to the 131,250 Preferred Shares that are issued and outstanding as of the date of this Amendment No. 2, and (iv) August 31, 2017, as to the first 131,250 Preferred Shares that are sold and issued subsequently to the date of this Amendment No. 2.







\*150403\*



BARBARA K. CEGAVSKE  
Secretary of State  
202 North Carson Street  
Carson City, Nevada 89701-4201  
(775) 684-5708  
Website: www.nvsos.gov

Filed in the office of <i>Barbara K. Cegavske</i>	Document Number <b>20180355175-07</b>
Barbara K. Cegavske Secretary of State State of Nevada	Filing Date and Time <b>08/10/2018 10:48 AM</b>
	Entity Number <b>E0609422012-3</b>

**Certificate of Withdrawal of  
Certificate of Designation**  
(PURSUANT TO NRS 78.1955(6))

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

**Certificate of Withdrawal of  
Certificate of Designation  
for Nevada Profit Corporations**  
(Pursuant to NRS 78.1955(6))

1. Name of corporation:

nFusz, Inc.

2. Following is the resolution by the board of directors authorizing the withdrawal of Certificate of Designation establishing the classes or series of stock:

RESOLVED, that the Certificate of Designation for this corporation's Series A Convertible Preferred Stock is hereby withdrawn, such that the existence of this series of preferred stock shall be terminated, and all authorized shares hereof shall no longer be so authorized and shall be added to and become undesignated shares of the Company's class of Preferred Stock.

3. No shares of the class or series of stock being withdrawn are outstanding.

4. Signature: (required)

**X**   
\_\_\_\_\_  
Signature of Officer

Filing Fee: \$175.00

**IMPORTANT:** Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

*This form must be accompanied by appropriate fees.*

Nevada Secretary of State Withdrawal of Designation  
Revised: 1-5-15



**DEFINITION ANNEX TO APARTMENT LEASE**

1. **Landlord:** La Park La Brea B LLC
2. **Landlord's Representative:** OP Property Mgmt, LP is the management company that manages the Community for Landlord, and which is authorized to receive notices, demands, and service of process on behalf of the Landlord. Landlord's Representative is Landlord's agent.
3. **Rental Payments and Notices to Landlord:** Rental payments are to be made to 348 Hauser Blvd  
Los Angeles CA 90036-3276  
Phone: (323) 937-5251
- Notices, demands and service of process on Landlord may be delivered to Landlord's Representative at the same location. The usual days and hours during which someone is available to receive payments are  
M-F: 10:00 AM - 06:00 PM, Sat & Sun: 10:00 AM - 05:00 PM
4. **Landlord's E-Mail Address:** palazzoeast@aimco.com
5. **Resident(s):** Rory Cutaia
6. **Resident(s) Phone Numbers and Email Addresses:**  
(909) 896-0648 RoryCutaia@gmail.com
7. **Resident's Address:** The address of the Apartment Home.
8. **Additional Live-In Residents:**

First Name	Last Name

9. **Community:** Palazzo East at Park La Brea, The(C)-042667
10. **Apartment Home:** 344 South Hauser, Bldg 5 #5-414  
Los Angeles CA 90036
11. **Lease Start Date:** 06/22/2017
12. **Lease End Date:** 04/30/2018
13. **Deposit:** \$1000.00
14. **Rent:** \$4743.00 + Sales Tax per month where applicable.
15. **Short Term Renewal Rent:** \$600.00 plus the higher of the Fair Market Rent or the current monthly Rent being paid by Resident immediately prior to the commencement of the Two-Month Renewal Term. The "Fair Market Rent" equals the rent that Landlord would charge for an apartment home comparable to the Apartment Home on the date that Landlord provides notice to Resident of the Short Term Renewal Rent.
16. **Late Charges Date:** The 4th day of the month.
17. **Late Charge:** \$150.00
18. **NSF Charge:** \$25.00
19. **Early Termination Option Fee:** Three months' Rent at the rate current when the Early Termination Option is exercised.
20. **Attorney Fee Cap:** \$1,000.00
21. **Utilities To Be Provided By Landlord:**  
None
22. **Asbestos:** \_\_\_\_\_ [If this line is checked] This Community and the Apartment Home may/do contain asbestos.
23. **Pest Control** [check as applicable]:  
\_\_\_\_\_ Landlord has not contracted with a registered structural pest control company to provide periodic pest control services to the Community. Resident agrees to notify Landlord immediately upon the discovery of any insect or other pest infestation.  
Landlord has contracted with a registered structural pest control company to provide pest control services to the Community periodically and acknowledges receiving a written notice regarding pesticides used in the Community as provided for under California Business and Professions Code §8538 and California Civil Code §1940.8.
24. **Smoke Free Areas:** The following areas are designated smoke-free areas:  
Resident shall pay Landlord upon demand for pest control as additional rent.

- The Apartment Home
- The building in which the Apartment Home is located
- All common areas
- \_\_\_\_\_ The entire Community, including individual Apartment Homes and common areas, except the following areas:  
N/A

**ADDITIONAL DEFINED TERMS**

1. **Definition Annex:** This Definition Annex to Apartment Lease.
2. **Additional Live-In Resident:** A person who is under 18 years of age, or has a legal guardian, at the time of the Lease Start Date or when the applicable Renewal Term begins, as identified in Resident's rental application or as subsequently changed with the prior written consent of Landlord.
3. **Lease Term:** The term commencing on the Lease Start Date and ending on the Lease End Date. The Lease Term also includes any Renewal Term, or other extension of the Lease.
4. **Common Areas:** All parking lots, driveways, walkways, passageways, landscaped areas, laundry rooms, recreational areas and other areas and facilities available for common use by residents.
5. **Community Rules:** Any and all written Community policies, rules or procedures, all of which shall be considered part of this Lease, including without limitation, the Community Policies and Procedures attached as an addendum to this Lease.
6. **Landlord's Related Parties:** Collectively, Landlord, Landlord's Representative and the respective officers, directors, members, managers, partners, shareholders, employees, affiliates, agents and representatives of Landlord and Landlord's Representative.
7. **Resident Parties:** Resident, Additional Live-In Residents and their guests and invitees.
8. **Rent Concession:** Any rent or similar concession, whether by free rent, partially abated rent, reimbursed expenses, waived fees or otherwise.
9. **Losses:** Any claim, action, lien, liability, fine, damages, injury (whether to person or property or resulting in death), cost or expense, including reasonable attorneys' fees and costs (including in-house counsel and all levels of proceedings).
10. **Claim:** Any claim for relief, including any alleged damages, whether accrued, contingent, inchoate or otherwise, suspected or unsuspected, raised affirmatively or by way of defense or offset.
11. **Enforcement Costs:** Landlord's costs of enforcing the terms of this Lease and of collection, including collection agency costs, litigation costs, and reasonable attorneys' fees and costs (including in-house counsel and all levels of proceedings), whether or not a lawsuit is brought. The attorneys' fees portion of Enforcement Costs will be subject the Attorney Fee Cap.
12. **Non-Rent Defaults:** Defaults under this Lease, other than the failure to pay rent or other amounts due under this Lease that are considered "Rent" by applicable law or under this Lease.
13. **Rent Damages:** Rent due and owing, the Late Charge and Enforcement Costs.
14. **Rent Default Termination Damages:** The total sum of amounts due under this Lease through the end of the Lease Term, including mitigation costs and Enforcement Costs, minus any amounts that could have reasonably been mitigated by Landlord.

Please carefully read this entire lease prior to signing as this is a legally binding document. The lease consists of the Definition Annex, Apartment Lease, Exhibits, Addenda, and attachments.



If you have any feedback on your apartment home or community, please contact the community manager at the on-site management office. If you would like to talk with the Aimco leadership team to further discuss any concerns, or if there's something we're doing well that you'd like to tell us about, please visit [www.aimco.com/feedback](http://www.aimco.com/feedback) and the Aimco leadership team will contact you. We look forward to having you as a resident and hope you enjoy your new home!

**LANDLORD:** By: \_\_\_\_\_ Authorized Representative

**RESIDENT(S):**

Resident is aware that Section 2.B. of this Lease contains an automatic renewal provision which provides that, after the Term End Date, this Lease will automatically renew for two (2) month periods until a notice of termination is given by either Resident or Landlord in accordance with Section 2.B., or, if applicable, until a Renewal Amendment is executed and delivered by Landlord and Resident.

_____ <i>Signature</i>	Rory Cutaia <i>Print Name</i>	_____ <i>Date</i>
_____ <i>Signature</i>	_____ <i>Print Name</i>	_____ <i>Date</i>
_____ <i>Signature</i>	_____ <i>Print Name</i>	_____ <i>Date</i>
_____ <i>Signature</i>	_____ <i>Print Name</i>	_____ <i>Date</i>
_____ <i>Signature</i>	_____ <i>Print Name</i>	_____ <i>Date</i>
_____ <i>Signature</i>	_____ <i>Print Name</i>	_____ <i>Date</i>



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## APARTMENT LEASE

THE PARTIES TO THIS APARTMENT LEASE are Landlord, acting by and through Landlord's Representative, and Resident. The Apartment Lease, together with the Definition Annex, Exhibits, Addenda and all attachments are collectively referred to herein as the "Lease". All capitalized terms are defined in the Definition Annex unless otherwise defined in this Lease.

### 1. LEASE OF APARTMENT HOME

A. Use. Landlord leases to Resident the Apartment Home. Resident may use the Apartment Home only as a private residence (or for small day care operations as allowed by Law) and not for any business or commercial use; however, Resident may maintain a home office in connection with a full-time off-premises business office (including telecommuting) as long as the home office use does not involve visitors, patrons or other persons coming to the Apartment Home or the sale of goods or services from or to the Apartment Home and if permitted under applicable laws.

B. Additional Live-In Residents. Only the Resident and Additional Live-In Residents identified in the Definition Annex may occupy the Apartment Home. Resident may have a guest for no more than 7 nights in any month, unless Landlord approves a longer period. Resident must obtain the prior written consent of Landlord to change Residents or add Additional Live-In Residents.

### 2. LEASE TERM

A. Initial Term. The lease of the Apartment Home is for the Lease Term.

#### B. Termination Notice; Automatic Short-Term Renewal

If Landlord or Resident intends to terminate the Lease on the Lease End Date the terminating party must give written notice to other party at least 60 days before the Lease End Date of the terminating party's intent to terminate the Lease. (the "Termination Notice"). This notice requirement contractually modifies any statutory termination notice period. Resident shall vacate the Apartment Home by the Lease End Date or the end of the Two-Month Renewal Term (as applicable). If Resident gives a proper 60 day Termination Notice, fully complies with the Lease, and vacates as agreed, Resident will be relieved of further liability to Landlord for future Rent accruing after the termination date. If Resident provides the Termination Notice less than a full 60 days before the Lease End Date, then Landlord may in its sole discretion elect to allow this Lease to end on the Lease End Date or the last day of the applicable Two-Month Renewal Term (rather than allowing the Lease to automatically renew as provided in the next paragraph), provided Resident pays Landlord an amount equal to one day of Short Term Renewal Rent for each day of the 60-day notice period that extends beyond the Lease End Date or end of the Two-Month Renewal Term, as applicable. Such charge is intended to be an enforceable liquidated damages amount. Actual damages of Landlord's lost revenue caused by the Resident's failure to provide 60 days' notice of Resident's intent to vacate would be difficult to determine with any certainty, and the charge is a reasonable estimate of such damages and not a penalty.

If Resident fails to provide written notice of Resident's intent to vacate at least sixty (60) days before the end of the Lease Term or any Two-Month Renewal Term, as applicable, then this except as may otherwise allowed by Owner in its sole discretion as provided in the first paragraph of this Section 2.B, this Lease shall automatically renew for additional two (2) month terms (each a "Two-Month Renewal Term") upon the Lease End Date or the end of each Two-Month Renewal Term, as applicable. Such renewals shall automatically continue until either (i) a written notice of termination is given by either Resident at least 60 days in advance in accordance with the first paragraph of this Section 2.B, (ii) a written notice of termination is given by Landlord at least 60 days in advance of the termination date, (iii) a Renewal Amendment is signed by Resident and Landlord. During the Two-Month Renewal Term, monthly Rent will be increased to the Short Term Renewal Rent. If Landlord does not give written notice of the Short Term Renewal Rent amount before the applicable Two-Month Renewal Term, then the monthly Rent for such Two-Month Renewal Term shall be deemed to be the same as the monthly Rent in effect immediately preceding such Two-Month Renewal Term.

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C. Renewal for a Term. Resident and Landlord may renew this Lease and extend the Lease Term by executing a renewal amendment (the "Renewal Amendment"). If executed by Resident and approved by Landlord, the Renewal Amendment shall have the same force and effect as the execution of a new lease and shall incorporate all of the terms of this Lease except as specifically changed in the Renewal Amendment.

D. Delaying Possession. If Landlord is unable to deliver possession of the Apartment Home to Resident on the Lease Start Date for any reason, Landlord shall not be in default under this Lease or liable to Resident for such delay and this Lease shall remain in force subject to the following:

- (i) Rent shall abate on a daily basis during the delay, and
- (ii) if the delay in possession extends for more than 5 days, Resident may terminate this Lease by giving written notice to Landlord no later than the 10<sup>th</sup> day after the Lease Start Date.

If Resident terminates the Lease, Resident shall be entitled only to a refund of the Deposit and any pre-paid Rent and this Lease shall be null and void. Resident shall not have the right to abate Rent or terminate this Lease because of cleaning or repair delays which do not prevent occupancy by Resident. If Landlord provides a Rent concession or abatement (in the initial month of occupancy or thereafter) with respect to the condition of the Apartment Home or otherwise, the same shall not be a waiver by Landlord of its right to collect the full Rent due under this Lease for any other month.

E. Early Termination. Resident is expected to remain a resident and perform all Lease obligations throughout the term of this Lease. Resident understands that Resident is liable under the Lease through the end of the Lease Term, even if Resident relinquishes possession of the Apartment Home before the end of the Lease Term. If Resident vacates the Apartment Home before the end of the Lease Term, Resident will be liable to Landlord for Rent Default Termination Damages (described in the Definition Annex of this Lease). To avoid this uncertainty, and as an alternate to liability for Rent Default Termination Damages, Resident may choose to pay a flat fee in advance to terminate the Lease early, rather than remaining liable for rent due through the end of the Lease Term. To do so, Resident may elect to exercise an Early Termination Option under the following conditions and by following these procedures:

- (i) At least 60 days before the date that Resident desires to end the Lease, Resident gives Landlord written notice of Resident's election to exercise the early termination option, signed by all Residents;
- (ii) Resident receives written confirmation from Landlord that Landlord has received this notice;
- (iii) Resident is not in default of this Lease both when Resident gives the notice and on the date of early termination;
- (iv) Resident pays Landlord all Rent and other amounts due through the early termination date;
- (v) Resident pays the Early Termination Option Fee and any Rent Concession, before the early termination date; and
- (vi) Resident vacates the Apartment Home on the early termination date in the manner provided in this Lease.

Exercise of the Early Termination Option will affect only Resident's obligations after the early termination date; Resident must comply with all other Lease obligations. Early termination shall not release Resident from any liability for damage to the Apartment Home or from the payment of Rent and other amounts when due, through the early termination date. Resident may not exercise the Early Termination Option under this paragraph if there are less than 3 months remaining on the Lease Term, or during a Two-Month Renewal Term.

F. Notice of Termination. After Resident gives the notice of intent to vacate or terminate under this section (including a Termination Notice), Resident cannot change Resident's move-out date as stated in the notice without



Landlord's prior written approval. Verbal notice shall not be sufficient to constitute notice of intent to vacate or terminate. Except for an early termination under this section, Resident's move out from the Apartment Home before the last day of the Lease Term or before the date of termination of a Two-Month Renewal Term shall not terminate this Lease or release Resident from liability under this Lease.

### 3. RENT

A. Monthly Rent. Resident shall pay the Rent specified in the Definition Annex, each calendar month. Resident shall pay the first month's Rent before the Lease Start Date. If Resident does not pay the first month's Rent before the Lease Start Date, Landlord will have no obligation to give Resident possession of the Apartment Home, Landlord may keep any funds paid by Resident necessary to compensate Landlord for Resident's breach of this Lease, and Landlord may pursue any other damages allowed by law. If the Lease Start Date is not the first day of the month, Rent shall be prorated from the Lease Start Date through the last day of the month and shall be payable before the Lease Start Date. If this Lease ends on a day other than the last day of a month, Rent for the final month shall be prorated from the first day of the final month through the Lease End Date. Except for a payment due date stated in a separate utility bill sent to Resident, and except for the first month's Rent, Rent and all other amounts to be paid by Resident to Landlord under this Lease are due and payable in advance and without demand, setoff or deduction at the Landlord's Address on the 1<sup>st</sup> day of each calendar month, and Resident shall be in default under this Lease if Resident fails to pay by that date. Landlord may require Resident to pay Rent to an address other than Landlord's Address specified above. If Resident delivers Rent or any other payment hereunder by mail, Resident ASSUMES THE RISK that the Rent or other payment is lost or delayed in delivery, and Resident shall be liable and responsible for the failure to make such lost or delayed Rent or other payment. Landlord may require Resident to pay Rent and other amounts due under this Lease by certified check, cashier's check, money order, or direct debit and by one monthly payment rather than multiple payments. If Landlord elects (in its sole discretion) to permit Resident to pay by personal check, Landlord may assess a convenience fee for such payment. Landlord may convert Resident's check to an electronic deposit or an electronic transmission (ACH) for processing. Except as otherwise provided by law, Landlord shall not be liable for any Loss related to any inaccuracies or mistakes made in the inputting of data or electronic deposit of such check, except to the extent caused by the gross negligence or willful misconduct of Landlord. If Landlord so elects, all payments of Rent, together with any utility charges payable by Resident to Landlord pursuant to this Lease, shall be made by the following methods: Automated Clearing House ("ACH") debit, certified check or money order. Following such election by Landlord: (i) if Resident elects to make payment by ACH, Resident shall promptly complete an automatic debit form provided by Landlord authorizing Landlord to establish arrangements for the transfer of payments of Rent and such utilities by ACH debit initiated by Landlord from an account in the name of Resident established at a United States Bank; (ii) Landlord may, at its option, refuse any amount tendered by Resident in any form other than an ACH debit, certified check or money order; and (iii) for purposes of this Lease (including, without limitation, the default, Late Charge, Daily Late Fee, NSF Charge, Rent Damages and Enforcement Costs provisions hereof), in the event that Landlord is unable, through no fault of Landlord or its bank, to successfully process any ACH debit hereunder, Resident shall be deemed not to have paid, and Landlord shall be deemed not to have received, such payment of Rent and/or utilities.

B. Late Payment and Late Fees. If in any month Resident does not pay and Landlord does not receive all Rent and all other amounts due under this Lease before the Late Charges Date, Resident shall pay the Late Charge. Actual damages to Landlord resulting from Resident's failure to pay Rent and other amounts when due would be difficult to determine with any certainty, and the Late Charge is a reasonable estimate of Landlord's costs and expenses necessarily incurred as a result of Resident's failure to pay, including the lost time value of monies owed and employee time and other costs associated with tracking late amounts, giving notice of late amounts and other collection-related activities. The Late Charge is not a penalty and is intended to be an enforceable liquidated damages amount. The Late Charge does not constitute a waiver by Landlord of Landlord's remedies or of the due date of the payment of Rent and other amounts.

C. Returned Checks, Rejected Credit Card Payment or Failed ACH Debit. If a check from Resident is returned to Landlord by a bank or other entity for any reason, if any credit card or debit card payment from Resident to Landlord is rejected or if Landlord is unable, through no fault of Landlord or its

bank, to successfully process any ACH debit Landlord is permitted to make hereunder, then

- (i) Resident shall pay to Landlord the NSF Charge;
- (ii) Resident shall pay to Landlord the Late Charge;
- (iii) Landlord retains all other rights and remedies under this Lease for default; and
- (iv) Landlord reserves the right to refer the matter for criminal prosecution.

It would be difficult to determine with certainty Landlord's actual damages resulting from rejection of any credit card or debit card payment from Resident to Landlord or if Landlord is unable, through no fault of Landlord or its bank, to successfully process any ACH debit. The NSF Fee is a reasonable estimate of Landlord's costs and expenses necessarily incurred as a result, including the lost time value of monies owed and employee time and other costs associated with tracking rejected credit or debit card payments and ACH debits, giving notice of rejected or unsuccessful payments and other collection-related activities. The NSF Fee is not a penalty and is intended to be an enforceable liquidated damages amount. The NSF Fee does not constitute a waiver by Landlord of Landlord's remedies or of the due date of the payment of Rent and other amounts.

D. Taxes. If any sales, use, excise, gross receipts or similar taxes are imposed on any fees or charges that Resident is required to pay under this Lease, Resident shall pay such tax to Landlord upon receipt of a bill from Landlord.

E. Application of Funds Received. Resident's right to possess the Apartment Home and all of Landlord's obligations under this Lease are expressly contingent on the timely payment of Rent and other amounts due under this Lease. Except as otherwise stated in this Lease or as required by applicable law, all funds received by Landlord (including the Deposit) shall be applied first to amounts that are not considered "Rent" by this Lease or applicable law, then to delinquent Rent and then to current Rent.

### 4. SECURITY DEPOSIT

A. Deposit. Resident shall pay the Deposit to Landlord on or before the Lease Start Date. If Resident does not pay the Deposit to Landlord on or before the Lease Start Date, Landlord will have no obligation to give Resident possession of the Apartment Home, Landlord may keep any funds paid by Resident necessary to compensate Landlord for Resident's breach of this Lease, and Landlord may pursue any other damages allowed by law. Landlord need not hold the Deposit in trust, nor deposit it in a segregated account, nor invest it in an interest-bearing account, unless required by law. Landlord will not pay Resident, or accrue for the benefit of Resident, any interest on the Deposit and Landlord may retain any such interest, unless required by law. The Deposit is not advance rent and cannot be applied to Rent by Resident.

B. Refund of Deposit. Landlord shall refund the Deposit to Resident as provided in this Lease and applicable law. At the option of Landlord, Landlord may pay any refund of the Deposit after applying all deductions, by one check payable and delivered to any Resident or one check jointly payable to all Residents but delivered to only one Resident. The amount of any refund will be calculated without regard to who paid the Deposit or whose conduct resulted in any deductions. Residents must provide written notice of the mailing address for any refund of the Deposit. Landlord shall mail the Deposit (less lawful deductions) and an itemized list of deductions no later than 21 days after Resident's surrender or abandonment of the Apartment Home. Upon the sale or transfer of the Community by Landlord and transfer of the Deposit to the new owner of the Community (either as a transfer of the Deposit or a credit against the purchase price), Resident shall look solely to such new owner, and not to Landlord, for a refund of the Deposit.

C. Additional Deposit. If Resident is late with Rent or any other amounts due under this Lease more than two (2) times during the Lease Term, Landlord shall have the right to immediately increase the Deposit by one-half (1/2) of the monthly Rent (provided that at no time shall the Deposit exceed the maximum security deposit allowed under applicable law). Resident shall deliver such additional Deposit to Landlord within five (5) days after demand.

### 5. UTILITIES

A. Landlord's Payment for Utilities. Landlord shall pay only for those utilities identified in the Definition Annex, which shall not include telephone.



Resident gives Landlord the right to select any utility provider and change the same from time to time without notice. Resident shall, subject to the direction of Landlord, pay for all other utilities (including related deposits, charges, fees and services). The records and all meters in the Community are presumed to be correct for all purposes. Resident shall transfer to Resident's name any utility(ies) required by Landlord to be so transferred. If Resident fails to transfer such utility(ies) by the time requested by Landlord, Landlord shall have the right to fine Resident an amount not to exceed \$25.00 after 2 days, plus \$25.00 after 30 days, plus \$25.00 after 60 days.

**B. Direct Billing by Landlord**

(i) Certain utility services, such as water, wastewater/sewer, trash removal, pest control, electric, cable TV and gas, may, from time to time, be billed by Landlord to Resident. The Apartment Home may not receive all of the utilities listed in the preceding sentence or the Definition Annex or may receive additional utilities. Resident may be required to contract with or pay directly certain utility providers. Resident shall pay Landlord for those utilities billed by Landlord or Landlord's agent for such billing (a "Utility Bill"). Such Utility Bill may be issued separate and apart from any invoice or bill for rent, or may be part of a consolidated statement containing rent, utilities, pest control and other applicable charges. These additional charges where allowed by law are considered to be additional rent and are to be paid in addition to the base rent. Resident understands that Resident may be required to pay a consolidated statement fee of

\$3.75 which may be in addition to or in lieu of other applicable fees.

(ii) Landlord may bill Resident for utilities based on a ratio utility billing (RUB), estimate, flat fee or actual reading of a submeter for Resident's Apartment Home, as determined by Landlord. Resident acknowledges that the basis for any utility or service related charges for which Resident is responsible may be derived from Landlord's utility bills, tax statements or other charges paid by Landlord.

(iii) Landlord may at any time require Resident to pay utility providers directly for Resident's own utility usage on a submetered or other basis as determined by Landlord. Landlord shall give Resident 30 days prior written notice before requiring Resident to begin paying a utility provider directly for Resident's utility usage.

(iv) As a regular part of each monthly Utility Bill, Resident may be charged, in which case Resident shall pay, a monthly service in addition to the utility service charges for which Resident is billed. The monthly service fee is for administration, billing, overhead and similar expenses and charges incurred by Landlord for providing or processing Utility Bills. Landlord may use a third party billing provider to provide all or part of the billing services directly.

(v) Resident agrees to allow Landlord, a billing service provider or any utility providers designated by Landlord, reasonable access to the Apartment Home to read the submeter(s), if any, for Resident's Apartment Home.

(vi) If Resident moves into or out of the Apartment Home on a date other than the first day of the month, Resident will be charged for the period of time that Resident was living in, occupying, or responsible for payment of Rent or utilities for the Apartment Home. If Resident is in default under this Lease by vacating the Apartment Home before the end of the term, Resident shall be liable for all charges for utilities until the earlier of (1) the end of the term, or (2) until the Apartment Home is re-rented.

**C. Failure to Pay Utilities.** Resident shall pay all charges for utilities on the date specified in a Utility Bill, whether to Landlord or a utility provider. This covenant is independent of every other covenant of this Lease. If Landlord elects to require ACH debit pursuant to Section 3, all Utility Bills payable to Landlord shall thereafter be paid by ACH debit in accordance with Section 3. If Resident is charged for utilities separately from Rent, then such charges shall be deemed "Rent" for purposes of any defaults under this Lease. Resident shall not allow any utility, other than telephone, cable or internet (if subscribed to directly by Resident) to be interrupted or interfered with or disconnected by any means, including the non-payment of a bill, until the end of the Lease Term; interruption, interference or disconnection is hazardous, and a material breach of this Lease.

**D. Use of Utilities.** Resident shall use the utilities only for ordinary household purposes and shall not waste them. Resident shall not tamper with, adjust or disconnect any metering or submetering system or device. Resident must comply with all energy conservation requirements imposed by Landlord, utility providers or governmental authorities. Failure to comply will be a material breach of this Lease and Resident will be responsible for resulting damages to Landlord.

**E. Change or Interruption in Utility Service.** Utilities now provided, or any utility rates now in effect, may not continue in the future. Resident's responsibility to pay for utilities shall be unaffected by any change in utilities, rate increase and/or reclassification. Landlord may make changes to, or install, utility wires, meters, sub-metering or load management systems, and similar electrical and other utility equipment serving the Apartment Home. This work shall be done in a reasonable manner.

**6. CONDITION OF APARTMENT HOME**

**A. Move-In Condition Form.** Before Resident takes possession of the Apartment Home, Resident and Landlord shall inspect the physical condition of the Apartment Home. Resident and Landlord shall execute Landlord's move-in and move-out condition form (the "Condition Form"), identifying all material damage or defects with the physical condition of the Apartment Home. Resident's failure to report specific defects or problems on the Condition Form shall be a binding agreement by Resident and conclusive evidence that the Apartment Home is acceptable and in good condition. Landlord has not made any promises to decorate, alter, repair or improve the Apartment Home, unless Landlord otherwise expressly states in the Condition Form or otherwise. **LANDLORD MAKES NO EXPRESS WARRANTIES REGARDING THE APARTMENT HOME AND COMMUNITY, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL EXPRESS WARRANTIES.**

**B. Cleaning and Upkeep of Apartment Home**

(i) Resident shall keep the Apartment Home, including all balconies, patios, and other areas reserved for Resident's private use, in a clean and sanitary condition.

(ii) Resident shall dispose of all garbage and recyclable materials in designated containers and areas in accordance with Landlord's regulations and applicable law. Resident shall not dispose of large items, except as permitted by Landlord. Landlord may charge Resident a fee for improper disposal of garbage.

(iii) Resident shall use all appliances, fixtures and equipment in the Apartment Home and Community in a safe manner and only for the purposes for which they are intended.

(iv) Resident shall maintain a temperature of at least 55°F in the Apartment Home so that the pipes will not freeze.

(v) Resident shall replace light bulbs in all light fixtures at Resident's expense.

(vi) Resident shall maintain all mechanical rooms located in the Apartment Home in compliance with applicable laws.

(vii) If the Apartment Home contains a "Stove Top Fire Stop" or similar canister above the stove, Resident shall be liable for any Loss related to such "Stove Top Fire Stop" or similar canister and shall pay Landlord for the replacement of each canister missing, damaged or not in working order. Resident shall notify Landlord immediately if any canister is missing or appears damaged.

(viii) Upon taking possession of the Apartment Home, Resident shall confirm that the smoke detector and carbon monoxide detector(s) (if any) are in good working order, and Resident shall maintain the smoke detector(s) through the Lease Term.

(ix) Upon request by Landlord, Resident shall, at Resident's expense, install rugs on any wood or laminate flooring in the Apartment Home for noise mitigation if deemed necessary by Landlord.

**C. No Alterations.** Resident shall not make any alterations, improvements, or installations to the interior or exterior of the Apartment Home, including wallpapering, contact paper, cork boards, mirrored squares, painting, awnings, window guards, shelves, screen doors, carpeting, alarm systems,





electrical systems, telephone, computer, cable television outlets, shower head devices, washers, dryers (portable or otherwise), fans, heaters, or air conditioners without the prior written consent of Landlord. Resident may place a reasonable number of small holes in sheetrock walls and in the grooves of wood paneling to hang pictures. If Landlord permits Resident to install a washer, dryer or other appliance,

(i) Landlord may require Resident to permit Landlord to install the same (and to pay Landlord the reasonable costs of installation),

(ii) Landlord may require the use of non-burstable hoses,

(iii) Landlord may require Resident to carry Renter's Liability Insurance with a minimum of \$10,000 per occurrence and \$500 deductible, which insurance shall (a) be written by an insurance company licensed to write insurance in the jurisdiction in which the Community is located, (b) name Landlord as an additional insured, (c) provide that it cannot be cancelled or non-renewed without at least 30 days' prior written notice to Landlord, (d) include a waiver of subrogation with respect to Landlord, and (e) is primary to any and all insurance carried by Landlord (collectively, the "Insurance Requirements").

(iv) Resident shall be liable for any Losses related to the use or presence of such appliance.

Resident shall be liable for all damage caused by any personal property or appliances permitted by Landlord. All such approved appliances must comply with applicable laws and Resident must furnish to Landlord satisfactory evidence of insurance that covers any and all damage related to such appliances prior to resident bringing such appliances into the Apartment Home, together with all insurance renewals. Resident shall not remove Landlord's fixtures, equipment, monitoring devices, or electronic alarm systems for any reason. If Resident makes any improvements to the Apartment Home (with or without Landlord's consent), such improvements shall, at the option of the Landlord, become the property of Landlord.

**D. Water Furniture.** Resident shall not place any water furniture in the Apartment Home, except that Resident may place a water bed in the Apartment Home so long as such water bed is permitted by applicable building codes and Resident has provided evidence to Landlord of renter's insurance that covers any property damage related to the water bed prior to Resident bringing the water bed into the Apartment Home, together with all insurance renewals. Subject to applicable law, the insurance shall

(i) be in a minimum amount of \$100,000 per occurrence;

(ii) have a deductible of no more than \$500; and

(iii) comply with the Insurance Requirements.

Resident shall maintain such insurance in effect for so long as the water bed is in the Apartment Home. Resident shall be liable for any Loss and shall indemnify and hold harmless Landlord with respect to the water bed. The presence of the insurance does not relieve Resident of any liability with respect to the water bed.

**E. Signal Reception Devices.** Resident may install signal reception devices (a "satellite dish or antenna") used to receive direct broadcast satellite services, receive or transmit fixed wireless signals via satellite, receive video programming services via multipoint distribution services, receive or transmit fixed wireless signals other than via satellite, and/or receive television broadcast signals at the Apartment Home, subject to the following conditions:

(i) A satellite dish or antenna may not be installed by Resident if the service received by such satellite dish or antenna is available to Resident through the building's master antenna system (if installed) at a cost comparable to the cost of Resident's proposed individual service.

(ii) A satellite dish or antenna may not exceed one meter (3.3 feet) in diameter.

(iii) The location of the satellite dish or antenna is limited to inside the Apartment Home or on a balcony or balcony railing, patio or terrace that is under the exclusive control of Resident. Installation is not permitted on any parking area, roof, exterior wall, window, windowsill, fence or Common Area or in an area that other residents are allowed to use. Allowable locations may not provide an optimal signal, or any signal at all.

(iv) Resident's installation, operation and use (a) must comply with reasonable safety standards; and all applicable laws; (b) may not interfere

with Landlord's cable, telephone or electrical systems or those of neighboring properties; (c) may not be connected to Landlord's telecommunications systems; and (d) may not be connected to Landlord's electrical systems except by plugging into a 110-volt duplex receptacle. Installation must be in accordance with all applicable federal, state and local laws and in a manner that will not damage the Apartment Home. A satellite dish or antenna that is placed in a permitted outside area, must be safely secured by one of three methods: (x) securely attaching it to a portable, heavy object such as a small slab of concrete; (y) clamping it to a part of the building's exterior that lies within the Resident's Apartment Home (such as balcony or patio railing without protruding over the railing); or (z) any other methods approved by Landlord. No other methods of attachment are allowed. Landlord may require reasonable screening of the satellite dish or antenna that does not impair reception or transmission.

(v) Resident may not damage or alter the Apartment Home and may not drill holes through outside walls, door jams, windowsills and the like. If Resident's satellite dish or antenna is located outside the Apartment Home (such as on a balcony or patio) the signals received by it may be transmitted to the interior of Resident's Apartment Home only by the following methods: (a) running a flat cable under a door jamb or window sash in a manner that does not physically alter the Apartment Home and does not interfere with proper operation of the door or window; (b) running a traditional or flat cable through a pre-existing hole in the wall that will not need to be enlarged to accommodate the cable; (c) connecting cables through a window pane similar to how an external car antenna for a cellular phone can be connected to inside wiring by a device glued to either side of the window, without drilling a hole through the window; (d) wireless transmission of the signal from the satellite dish or antenna to a device inside the Apartment Home; or (e) any other method approved by Landlord.

(vi) Resident shall maintain the satellite dish, antenna and all related equipment.

(vii) Resident shall remove the satellite dish or antenna and other related equipment when Resident moves out of the Apartment Home. Resident shall pay for any damages and for the cost of repairs or repainting which may be reasonably necessary to restore the Apartment Home to its condition prior to the installation of Resident's satellite dish, antenna or related equipment, ordinary wear and tear excepted.

(viii) As long as the satellite dish and antenna are installed in the Apartment Home, Resident shall maintain and provide Landlord prior to Resident bringing the satellite dish into the Community, with satisfactory evidence of liability insurance in the amount of \$10,000 naming Landlord as an additional insured, together with all insurance renewals, to protect Landlord against Losses relating to Resident's satellite dish or antenna. Resident shall comply with all Insurance Requirements. Resident shall hold harmless and indemnify Landlord's Related Parties against any Losses related to the use, maintenance or presence of Resident's satellite dish, antenna or related equipment.

(ix) Resident's Deposit shall be increased by an Antenna Deposit of \$0.00 to offset possible repair costs, damages, or failure to remove at time of move out. This addition to the Deposit does not imply a right to drill or otherwise alter the Apartment Home or Common Areas, and it may be used for any purpose, whether or not related to the satellite dish, antenna, or related equipment.

(x) Resident may start installation of Resident's satellite dish or antenna only after Resident has: (a) provided Landlord with a copy of written proof of the liability insurance referred to in this section; and (b) paid the additional Deposit referred to in this section. After Resident has met the requirements in this section, Landlord shall issue Landlord's written authorization on the Community's satellite dish approval form.

**F. Damage to Apartment Home and/or Common Areas including but not limited to Community facilities.** Resident shall pay to Landlord within 3 days after demand the Loss incurred by Landlord caused by any Resident Party or pets or animals. Landlord may demand such payment either before or after a repair is made. Landlord's delay in demanding such payment is not a waiver of Landlord's right to demand such payment.



**G. Mold Remediation.**

(i) Resident shall use best efforts to prevent any conditions in the Apartment Home that could create an environment conducive to mold growth, including:

- a. Controlling indoor temperature and humidity by maintaining fresh air circulation, using the HVAC system during hot weather, (whether or not any Resident Party is in the Apartment Home) to maintain the temperature in the Apartment Home at 78°F or lower, keeping the humidity in the Apartment Home below 60%, and not running the air conditioner with windows or balcony doors open. Resident accepts responsibility for condensation and potential mold development if air conditioning is consistently run with the windows or balcony doors open. Landlord shall have the right, but not the obligation, to enter the Apartment Home upon reasonable notice to turn on the air conditioning in an effort to cause the temperature within the Apartment Home to be maintained as required herein while Resident is absent from the Apartment Home (with all utility consumption costs to be paid by Resident to the extent otherwise required herein);
- b. Not disconnecting, altering or otherwise changing the HVAC system, bathroom, and kitchen exhaust fans;
- c. Arranging furniture so as not to block airflow or thermostats;
- d. Not installing any vapor barriers that can trap moisture in interior wall cavities, such as wall paper or paneling;
- e. Not installing carpet in wet areas, such as kitchens or bathrooms, or on balconies;
- f. Not storing paper and cardboard in unventilated areas;
- g. Drying surfaces that develop condensation;
- h. Using bathroom exhaust fans when showering;
- i. Preventing elevated humidity levels from fish tanks and humidifiers;
- j. Placing saucers underneath houseplants and avoiding excessive numbers of house plants;
- k. Using exhaust fans when cooking, washing dishes or house cleaning;
- l. Not obstructing or otherwise blocking building weep screens, drains, gutters, or any other means of water drainage from the building or balconies. Residents agree to notify building management if bathroom or kitchen sealants crack, dry out, rot, or are otherwise compromised;
- m. Preventing rainwater from entering the Apartment Home;
- n. Cleaning and drying any damp surfaces, carpeting or personal property within 48 hours of the dampness occurring;
- o. Conducting visual inspections of the Apartment Home at least once a month for plumbing and other water leaks and reporting plumbing leaks or uncontrollable moisture to the management office promptly;
- p. Conducting visual inspections of the Apartment Home at least once a month for mold on window frames, carpets, tiles, plants, personal property, wallpaper, books, and papers and regularly cleaning small amounts of mold or mildew, for example on bathtub areas and window sills, with detergent and drying the surface; and
- q. Not bringing any personal property into the Apartment Home that contains visible mold.

(ii) If suspect fungal growth or excessive moisture develops, Resident shall notify Landlord immediately and shall remedy any such conditions caused by any Resident Party. Landlord's Related Parties are not responsible for the consequences of any conduct of any Resident Party that leads to or exacerbates mold growth, and Resident shall indemnify and hold harmless Landlord's Related Parties from any Loss related to such conduct. Resident promptly shall report to Landlord, in writing, any actual or potential moisture or mold problem, regardless of what may have caused such problem. Failure to make a prompt written report of any such potential moisture or mold problem constitutes a default and an unconditional waiver and release of Claims relating to the unreported conditions.

(iii) If Landlord notifies Resident of Landlord's intention to investigate and/or remediate mold in the Apartment Home, Resident shall provide immediate access to the Apartment Home to permit Landlord to investigate and/or remediate any problem. If Landlord determines that Resident should vacate the Apartment Home during investigation and/or remediation, Resident will relocate (at Landlord's expense) to another Apartment Home within the Community for the period of time necessary to complete such investigation and/or remediation. Resident's refusal to relocate in accordance with these provisions, or any other interference with Landlord's remediation efforts, shall constitute a breach of this Lease by Resident and an unconditional waiver and release of any Claims related to exposure to or the presence of mold. Upon Resident's breach of any provision of this section, Landlord may terminate this Lease, evict Resident immediately and exercise all other remedies for breach of this Lease.

(iv) If Resident is found to be partially or wholly liable for the mold infestation and cost of remediation, Resident shall be responsible for all Losses suffered by Landlord, including, but not limited to, any investigation and remediation expenses and costs to relocate Resident.

**H. Emergencies.** If an emergency or other event occurs which, in Landlord's reasonable opinion, jeopardizes the health, safety or welfare of Resident Parties or persons in the Community, Landlord may, subject to applicable law (i) lock-out, or otherwise prohibit, Resident from entering the Apartment Home for a reasonable period of time, and such action shall not constitute constructive or actual eviction, or (ii) terminate this Lease by written notice to Resident.

**I. Basements.** Resident may use the finished basement, if any, in the Apartment Home as living space as long as the occupancy limits for the Apartment Home are not exceeded. Resident acknowledges that the basement may not be flood free, and Landlord shall not be liable for any Losses arising from the use of the basement.

**J. Fireplaces.** Resident shall be liable for any Losses resulting from the use of any fireplace located in the Apartment Home.

**K. Bed Bugs and Pests.**

(i) "Pests" include (but are not limited to) ants, bed bugs, cockroaches, fleas, mites, spiders, termites, mice, rats, other vermin and insects.

(ii) Landlord has inspected the Apartment Home and is unaware of any pests in the Apartment Home. At move-in, Resident will complete and sign a Condition Form documenting the Apartment Home's condition. If Resident fails to report pests in the Condition Form, it will be presumed that the Apartment Home has been delivered in good condition and free of pests.

- (iii) Resident agrees to cooperate with Landlord's pest control efforts by:
- Keeping the Apartment Home clean and uncluttered;
  - Promptly advising Landlord of any pest infestations or pest control needs;
  - Providing Landlord with access to Apartment Home for Landlord's pest control assessments and pest control treatment;
  - Preparing the Apartment Home for pest control treatment and/or vacating the Apartment Home when necessary in connection with Landlord's pest control efforts. Resident will comply with all instructions necessary to prepare the Apartment Home for fumigation, testing/inspection or repair. Storage, cleaning, removal, or replacement of contaminated or potentially contaminated personal property will be Resident's responsibility and at Resident's expense unless the contamination was the result of Landlord's negligence, intentional wrongdoing or violation of law. Landlord is not responsible for any condition about which Landlord is not aware;
  - Upon request by Landlord, promptly providing Landlord with copies of all records, documents, sampling data and other materials relating to the condition of the Apartment Home.

(iv) If requested by Landlord, Resident agrees to temporarily vacate the Apartment Home for fumigation, testing/inspection, or repairs. If Resident is required to vacate the Apartment Home for treatment, Landlord may (but will not be required to) waive rent due for the period of Resident's vacancy on a per diem basis. Alternatively, Landlord may



choose to temporarily relocate Resident to another unit for the Apartment Home during the treatment period. Resident will be entitled to neither unless the infestation was the result of Landlord's negligence, intentional wrongdoing or violation of law. Resident will bear the expense of moving Resident and his or her property to the substitute unit unless otherwise agreed by Landlord or otherwise provided by law. If Resident relocates, upon written notice of completion of the pest control measures requiring relocation, Resident will promptly return and reoccupy Resident's original unit (the Apartment Home) and vacate the substitute unit.

(v) Bed bugs are wingless parasites about 1/5 inch long. Adult bed bugs are rusty red or mahogany. Immature bed bugs are smaller and are a lighter, yellowish-white color. Bed bug infestations are becoming more common and can be found even in first class hotel and living accommodations. Bed bugs are transferred to new locations on people, their clothing, furniture, bedding, and luggage.

To prevent bed bug infestations, Resident agrees that before move-in and/or bringing new items to the Apartment Home, Resident will inspect all luggage, bedding, clothing, and personal property and to carefully scrutinize and consider the history of any used furniture before bringing it to the Apartment Home. (Resident should be mindful that furniture found discarded in or around dumpsters or elsewhere may have been discarded because of a bed bug infestation). Resident will allow Landlord to do the same upon request. If Landlord has a concern about possible infestation, Landlord may (but will not be obligated to) either prohibit Resident from bringing the item into the Apartment Home and building or, require Resident to have the item treated at Resident's expense before the item is brought into the Apartment Home or building.

Resident will immediately notify Landlord of any condition in the Apartment Home indicating a bed bug infestation, such as bed bugs (whether alive or dead); blood spots (either red or brown) or excrement spots (brown or black) on bedding or the bed; or a sweet odor.

Bed bug treatment is challenging. It requires Resident's cooperation, professional treatments over several weeks, and will require treatment and/or discarding of furniture, clothing, and personal property. Because of the difficulty of bed bug extermination, and because of the risk that bed bugs could spread into other units, Resident agrees that if bed bugs are found, Resident will immediately contact Landlord, and will not attempt to personally exterminate bed bugs without professional assistance. Resident acknowledges that Landlord shall not be responsible for any loss of personal property suffered by Resident as a result of an infestation of bedbugs. Resident may acquire renter's insurance to cover such losses.

(vi) Because pests may pose a risk to the health and safety of other residents, Resident's breach of Resident's pest control obligations is a material breach of the Lease.

(vii) Resident agrees to indemnify and hold Landlord harmless from any claims, losses, damages and expenses that Landlord incurs from the negligence of Resident or Resident's household members, guests or agents, or their failure to comply with Resident's pest control obligations.

7. **REPAIRS AND MALFUNCTIONS.** Resident shall request promptly any repairs to be made to the Apartment Home or its contents, fixtures, security devices and other equipment that belong to Landlord. Resident must notify Landlord immediately of any malfunction or damage caused by fire, water or similar cause and of any water leaks, electrical problems, heating problems, broken locks or latches or other condition that may pose a hazard to health, property or safety. Upon receipt of a request, Landlord shall endeavor to act with reasonable diligence to make the repairs and this Lease shall continue and the Rent shall not abate. The Resident's request for repair is Resident's agreement for Landlord to enter the Apartment Home to perform the repair. Landlord may decide not to enter the Apartment Home if a person under 18 years old is present without a person 18 years or older also present. Landlord temporarily may turn off equipment and interrupt utilities to avoid damage to property or to perform maintenance and this shall not constitute constructive eviction of Resident. If a request for repair is not made in writing, Resident must establish when Resident made the request.

## 8. **KEYS AND LOCKS**

A. **Ownership of Keys and Access Cards.** All keys, access cards and remote controls are the sole property of Landlord. Landlord may charge an addition to the Deposit for any key, access card or remote control, and may charge a fee if any key, access card or remote control is lost or not returned. Resident shall be liable for any Loss related to the improper use of any key, access card or remote control. At the termination of this Lease, Resident shall return all keys, access cards and remote controls to Landlord.

B. **Change in Locks.** Resident shall not install additional or different locks or gates on any door or window of the Apartment Home without the prior written permission of Landlord. If Landlord approves Resident's request to install such locks, Resident shall provide Landlord with a key for each lock and shall reimburse Landlord all reasonable costs incurred to remove such locks. Resident shall not duplicate keys for the Apartment Home. Landlord may copy all keys for the Apartment Home, whether provided by Landlord or Resident.

## 9. **COMMUNITY POLICIES**

A. **Community Rules.** Resident Parties shall comply with the Community Rules. Resident is responsible for the conduct of the Resident Parties. Landlord may make reasonable policy changes that are applicable to all residents if in writing and given to Resident. All policy changes shall be effective immediately and shall constitute a part of this Lease. **Resident acknowledges receipt of the written Community Rules from Landlord prior to the execution of this Lease and understands that the terms and conditions of the Community Rules are incorporated in this Lease.**

B. **Common Areas.** Common Areas are subject to Landlord's exclusive control. Sidewalks, steps, outside hallways, entrances, walkways and stairs shall not be obstructed in any way or used for any purpose other than ingress or egress. Common Areas may not be used for storage or the placement of bicycles, personal property, athletic equipment, trash, refuse or similar items. Landlord may impose specific restrictions on Resident's use of the Common Areas by giving notice by sign, letter or other means to Resident, and violation of any such restrictions shall be a default by Resident of this Lease. Resident Parties shall use Common Areas with care and solely at their own risk.

C. **Defacing the Common Areas.** Resident shall not litter the Community grounds or Common Areas, destroy, deface, damage or remove any part of the Apartment Home, Common Areas or other parts of the Community, or light any open fires except in designated fireplaces. Except as otherwise provided by law, Resident shall not display any sign or advertising matter that is visible outside the Apartment Home or is on the Common Areas or otherwise in the Community without Landlord's prior written consent.

D. **Other Improper Conduct.** Resident Parties shall not engage in unlawful, improper, unreasonable or prohibited behavior, all of which shall be a breach of this Lease, including the following:

- (i) loitering in Common Areas or the management or leasing office;
- (ii) using landscaped areas for recreational purposes;
- (iii) serving alcoholic beverages in Common Areas;
- (iv) loud, disorderly, or unlawful conduct, harassment, or nuisances, including, but not limited to, noxious odors or other emissions that violate any applicable law;
- (v) disturbing, infringing upon, adversely affecting or threatening the rights, comfort, health, safety, property or convenience of others in or near the Community;
- (vi) possessing, selling, or manufacturing illegal drugs or drug paraphernalia;
- (vii) engaging in or threatening violence;
- (viii) possessing a weapon prohibited by law;
- (ix) discharging a firearm in the Community;
- (x) displaying or possessing a gun, knife or other weapon in the Common Area in a way that may alarm others;
- (xi) authorizing solicitors or salespersons to enter the Community;



- (xii) operating a business;
- (xiii) bringing hazardous materials into the Community;
- (xiv) using sterno logs in the fireplace; using candles or kerosene lamps or heaters;
- (xv) cooking on a balcony or in the Common Area (other than those in which such cooking is expressly permitted by Landlord);
- (xvi) storing anything in closets which contains gasoline, kerosene, propane or other similar substances;
- (xvii) engaging in any act or practice which will injure the reputation of the Community or cause harm to others; or
- (xviii) violating any law, regulation, ordinance or order.

E. **Landlord's Right to Exclude Persons.** Landlord reserves the right to control the entry upon the Community by Resident's guests or invitees. Landlord reserves the right to exclude any Resident Party and other persons

- (i) who, in Landlord's reasonable discretion, are involved in activities, including illegal drug-related activities, which may be harmful to the residents and neighbors of the Community;
- (ii) who, in Landlord's reasonable discretion, cause disturbances at the Community which disrupt the livability of the Community or interfere with the management of the Community or the quiet enjoyment of any resident to their apartment home, or
- (iii) whose activities at the Community are in violation of any laws.

Landlord may exclude anyone who previously has been evicted from the Community for a Non-Rent Default. Additional Live-In Residents, and guests and invitees who have been notified by Landlord not to return to the Community also may be arrested for criminal trespass if they return to and enter the Community. If Resident has an Additional Live-In Resident, guest or invitee in the Apartment Home or on the Community whose presence at the Community is a violation of this section, Resident shall be in violation of this Lease. If Resident does not cure such violation within 3 days after receipt of written notice from Landlord, or if Resident again is in violation of this section after receiving a notice of default and right to cure, this Lease shall terminate and Resident shall be in default of this Lease. If such violation may cause imminent harm to any person or property (as determined in Landlord's reasonable discretion), then the 3-day request shall be inapplicable and Resident shall cure the violation immediately upon verbal or written notice from Landlord.

F. **Member Cards.** Landlord may photograph each resident of the Community and give such resident a Member Card with his or her picture on the Member Card for identifying individuals who live and have access to the Community and the Common Areas. Landlord may install devices that require use of the Member Cards to gain access. Landlord may require that the Member Card be produced by anyone seeking access, and may exclude access for a reasonable period of time to anyone who does not produce the Member Card until the resident's identity can be verified. Landlord may disclose Resident information contained on the Member Cards, including photographs, only if Resident consents to disclosure, in accordance with the Community's resident privacy policy or if requested to do so by law enforcement officials. Landlord will not use the Member Cards for commercial purposes. Member Cards may be used only for identifying residents to the Community and not for proof of legal residency or identity to third parties. The Member Cards are the property of Landlord and must be returned upon request or upon termination of this Lease. Landlord shall have no obligation to provide or require the use of Member Cards.

G. **Deliveries.** Landlord may accept deliveries of certain types of parcels at the Landlord's management office. If Resident desires Landlord to permit a delivery person to enter the Apartment Home, Resident must execute Landlord's permission form. Landlord's Representatives shall not be liable for any Loss relating to deliveries accepted by Landlord or any entry into Resident's Apartment Home.

10. **PARKING AND VEHICLES.** Landlord may regulate and/or prohibit the time, manner, place of parking, number parked, charge for parking, use and/or storage of cars, trucks, recreational and commercial vehicles, motorcycles, mopeds, boats and other motor vehicles ("**Motor Vehicles**"), and of bicycles, trailers, tricycles, skateboards, roller skates, trampolines, and exercise equipment. Landlord may limit the parking spaces available for guests and (California - Rev. 5/2014) 7

invitees and limit the duration that a guest or invitee may park at the Community. A guest or invitee shall not be allowed to park at the Community for more than 7 days in any month. A Motor Vehicle is unauthorized or illegally parked in the Community if it: (A) has flat tires or other condition rendering it inoperable; (B) is on jacks, blocks or has wheel(s) missing; (C) has no current license or no current inspection sticker; (D) takes up more than one parking space; (E) belongs to a Resident or Additional Live-In Resident who has surrendered or abandoned the Apartment Home; (F) is parked in a marked handicap space without the legally required handicap insignia; (G) blocks another vehicle from exiting; (H) is parked in a fire lane or designated "no parking" or "restricted parking" area; (I) is parked in a space marked for other resident(s) or apartment homes(s); (J) is parked on the grass, sidewalk, patio or staircase; (K) blocks garbage trucks from access to a dumpster; (L) cannot lawfully be operated as a vehicle on the road; (M) has a malfunctioning alarm; or (N) is parked in a designated visitor or office parking space. Except as permitted by Landlord, Resident shall not perform repairs or maintenance on any Motor Vehicle anywhere in the Community. Motorcycles and mopeds may be parked only in designated areas and must have an operable device to prevent damage to the asphalt from the kickstand or similar support device. Gasoline, fuel grade alcohol or other explosive materials may not be stored at the Community, including, in parking areas. Resident shall be responsible for oil stains and other damage caused by any Motor Vehicle of any Resident Party. No Motor Vehicle may be parked or stored at the Community unless such Motor Vehicle is regularly used by a Resident Party as a means of transportation. Resident Parties are responsible for the proper operation of vehicle alarms and theft deterrent systems. Landlord may tow, at the expense of the owner and Resident, a Motor Vehicle that is unauthorized or illegally parked at the Community, or parked in violation of this Lease. Landlord shall not be liable for any Losses resulting from such towing.

11. **EQUIPMENT, SERVICES AND FACILITIES.** Landlord may provide for Resident's use various services, equipment and facilities (collectively, the "**Facilities**"), such as laundry rooms, exercise rooms and facilities, storerooms and swimming pools. Landlord may modify or cancel the Facilities at any time. Resident's use of the Facilities is subject to the Community Rules or the rules or instructions provided at the Community. Resident shall not allow Resident Parties who do not comply with the rules to use the Facilities. Resident may be required to show identification to enter or use the Facilities. Landlord may deny use or access to any Resident Party who fails to follow instructions or fails to comply with the rules or the requirements of this section. The Facilities are provided for Resident only as an incidental service, and Landlord may not provide any attendants or supervisors. To the extent allowed by law, Resident Parties shall use the Facilities wholly at their own risk, and will indemnify and hold harmless Landlord's Related Parties from any Claim or Loss suffered or sustained by Resident Parties in connection with the use of the Facilities, regardless of whether such Loss results from Landlord's negligence, but excluding Landlord's gross negligence or willful misconduct. Landlord disclaims, excludes and denies all express and implied warranties with respect to the physical condition and operation of the Facilities provided. The Facilities are for the exclusive use of Resident and Additional Live-In Residents and for invitees and guests of Resident and Additional Live-In Residents as permitted by Landlord.

## 12. **LIABILITY**

A. **Insurance.** LANDLORD AND LANDLORD'S REPRESENTATIVE ARE NOT INSURERS. LANDLORD STRONGLY RECOMMENDS THAT RESIDENT SECURE INSURANCE TO PROTECT AGAINST PERSONAL INJURY AND PROPERTY DAMAGE, INCLUDING LOSSES FROM THEFT, FIRE, WATER DAMAGE AND VANDALISM.

Resident specifically and expressly agrees that (1) he/she is not an implied co-insured of Landlord or Landlord's Related Parties under any insurance policies carried by Landlord or Landlord Related Parties and (2) Resident will be liable to Landlord for fire damage or other casualty to the Community caused by the Resident Parties.

### B. **Personal Safety.**

- (i) Landlord's Related Parties do not guarantee or warrant Resident's personal security or safety. Landlord has no duty to provide security devices. Any protective steps (such as courtesy patrols or guards) that Landlord takes are neither a guarantee nor warranty against criminal acts or against the violent tendencies of third persons in the Community or



otherwise. Resident's personal safety and security is Resident's personal responsibility.

(ii) Landlord is under no obligation or duty to inspect, test or repair any security device, except when advised by Resident that the locking device is not functioning necessary to maintain (a) an operable dead bolt lock on each main swinging entry door of a dwelling unit and (b) operable window security or locking devices for windows that are designed to be opened (except for louvered windows, casement windows and windows more than 12 feet vertically or 6 feet horizontally from the ground, a roof, or other platform). Landlord may elect to retain (or cancel) an independent contractor for lockouts, disturbances, fire lane violations and problems similar in nature. Landlord assumes no responsibility for the security of Resident through the retention of an independent contractor. Landlord has no liability for the acts or omissions, whether negligent, intentional or otherwise, of such independent contractor. The independent contractor is not a police force nor a guaranteed deterrent to crime. In the event of criminal activity, Resident should contact the police department.

(iii) Resident shall give Landlord keys, codes or operating devices immediately upon installation of any additional security device in the Apartment Home. Any security devices installed by Resident must comply with all applicable laws. Resident shall provide Landlord with a copy of any necessary permit or license prior to installing any additional security device. Resident shall be liable for any license or other fee, or any fine, related to any additional security device.

C. Release. To the greatest extent allowed by law, Resident, for Resident Parties, releases Landlord's Related Parties, and acknowledges and agrees that Landlord's Related Parties shall not be liable for any Loss incurred as a result of the following:

(i) theft, burglary, rape, assault, battery, arson, mischief or other crime, vandalism, fire, smoke, water, lightning, rain, flood, water leaks, hail, ice, snow, wind, explosion, sonic boom, interruption of utilities, electrical shock, defect in any of the contents of the Apartment Home, defects in the Community (including latent defects), pest infestations, acts of God, acts of other residents or their occupants, guests or invitees, or any other cause;

(ii) utility services, outages, interruptions or fluctuations in utilities provided to the Apartment Home;

(iii) the failure of Landlord to deliver possession of the Apartment Home or the termination of this Lease pursuant to the terms of this Lease;

(iv) the use of the Community's equipment, services and facilities;

(v) the storage, disposal or sale of personal property in the Apartment Home, including theft by others and under Section 15;

To the greatest extent allowed by law, (a) Resident, for Resident Parties, unconditionally and absolutely releases Landlord's Related Parties from all Losses and waives all claims for offset, setoff or reduction of Rent or diminished rental value of the Apartment Home resulting from such Losses, and (b) Resident shall indemnify and hold harmless Landlord's Related Parties from any Loss related to the use or occupancy of the Apartment Home or Community by Resident Parties and from any Claims made by Resident Parties.

13. ENTRY BY LANDLORD. Landlord and its contractors or servicemen may enter the Apartment Home as allowed by law, which includes the following purposes: to make necessary or agreed repairs, decorations, alterations or improvements, to supply necessary or agreed services, or to exhibit the Apartment Home to prospective or actual purchasers, mortgagees, tenants, workmen or contractors, or to make an inspection pursuant to subdivisions (f) of California Civil Code Section 1950.5 when Resident has abandoned or surrendered the Apartment Home or pursuant to court order. If the Apartment Home has been equipped with an electronic alarm system approved by Landlord, Landlord may turn the system off to enter the Apartment Home and may enter and allow the alarm to sound for the above described purposes.

14. ANIMALS. Resident shall not permit any animal, including pets (even temporarily except for service animals of guests or invitees with disabilities), to enter or remain in the Apartment Home or the Community without the prior written consent of Landlord. The presence of an animal without Landlord's consent shall constitute a material breach of this Lease.

## 15. ABANDONMENT

A. When Abandonment Occurs. During the Lease Term, the Apartment Home and any of Resident's personal property in the Apartment Home shall be deemed abandoned and Landlord may re-take possession of it, in accordance with applicable law, if:

(i). Landlord reasonably believes that the tenant has left the Apartment Home and doesn't intend to return;

(ii). Rent has been unpaid for 14 days;

(iii). A notice of abandonment of real property has been mailed, and Resident has failed to respond within 18 days from the date of mailing, to the Resident's last known and any other addresses that have a reasonable chance of being received by Resident.

B. Disposition of Personal Property. If Resident leaves personal property in the Apartment Home at the end of this Lease or abandonment of the Apartment Home, Landlord may dispose of it as allowed by law. If Landlord does store or sell any such personal property, Resident shall pay Landlord the reasonable charges for packing, removing, storing and selling any property removed or stored by Landlord. If Landlord sells any personal property of Resident, Landlord may do so pursuant to any means permitted by law. If Landlord has stored any personal property, Resident may redeem it only as provided by law and after paying Landlord the reasonable storage costs. Landlord may require Resident to claim such redeemed personal property at the Community or place of storage.

## C. Personal Property Upon Death

(i) To the extent permitted by applicable law, upon the termination of this Lease because of the death of all Residents, Landlord may, at its option, (a) release it to Resident's "emergency contact" as designated in Resident's rental application or as otherwise provided in this section, provided that such person or the estate of Resident agrees to pay Landlord all storage costs; (b) release Resident's personal property as directed by a court or as allowed by law, provided that such person or the estate of Resident agrees to pay Landlord all storage costs; or (c) treat the personal property as abandoned personal property.

(ii) If after the death of a Resident, another Resident remains living, Landlord may treat all of the personal property located in an Apartment Home as belonging to any living Resident, unless otherwise directed by a court order.

(iii) Landlord is not required to select among competing claims to personal property.

## 16. DEFAULT BY RESIDENT

A. Default. Resident shall be in default of this Lease if

(i) Resident fails to pay Rent or other lawful amounts when due under this Lease, including reimbursement for damages and repairs;

(ii) any Resident Party violates any covenant or condition of this Lease or any laws with respect to the use or occupancy of the Apartment Home or Community (regardless of whether arrest or conviction occurs);

(iii) Resident abandons the Apartment Home;

(iv) Resident (or Resident's Guarantor) has given incorrect or false information on the rental application;

(v) during the Lease Term, Resident or any Additional Live-In Resident is convicted of, or pleads guilty or "no contest" with respect to the manufacture, sale or distribution of any controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)) or any violent crime;

(vi) any illegal drugs or paraphernalia are found in the Apartment Home. Resident may exercise any statutory right to cure any default to the extent (but only to the extent) required by law; or

(vii) Resident or any Additional Live-In Resident has been is or becomes a Specially Designated National or other Blocked Person designated by the United States government as a person who commits or supports terrorism or is involved in international narcotics trafficking.



B. Remedies. Upon default by Resident, after the lapse of any applicable statutory cure period, Landlord shall have all remedies available at law, equity, statute or this Lease, all of which may be pursued individually, successively or together. Upon a default by Resident, Landlord may

- (i) collect the Rent Damages, if any, and any other Loss, if any, related to any Non-Rent Defaults; or
- (ii) terminate the Lease and collect the Rent Default Termination Damages, if any, and collect any other Loss, if any, related to any Non-Rent Defaults.

Landlord may (with or without demand for performance) terminate Resident's right of occupancy of the Apartment Home by giving Resident the minimum prior written notice required by law to vacate, and be entitled to immediate possession by eviction suit. If Resident vacates or abandons the Apartment Home, Resident expressly waives, to the maximum extent permitted by law, any and all notices to vacate. Upon any default by Resident, Landlord shall be entitled to collect the Enforcement Costs. To the extent permitted by law, Landlord may give notice to vacate, if required, by any of the following methods:

- (i) personal delivery;
- (ii) by leaving a copy of the notice with a person of suitable age and discretion, at Resident's residence or usual place of business if Resident is absent from such place and mailing a copy to each Resident at the Resident's place of residence;
- (iii) by posting a copy for each Resident in a conspicuous place on the Apartment Home and mailing a copy to Resident at the Apartment Home, or
- (iv) as otherwise permitted by law.

C. Duty to Mitigate. If applicable law requires Landlord to attempt to mitigate its damages by reletting the Apartment Home, Landlord is not required to relet the Apartment Home before it leases other vacant apartment homes, Landlord may relet the Apartment Home for a period longer or shorter than the remaining Lease Term, and Landlord is not required to relet the Apartment Home at a rent less than, or on terms less advantageous to Landlord than, it is leasing other similar apartment homes. If Landlord relets the Apartment Home, any payments made after reletting shall be credited first against the Rent Damages or Rent Default Termination Damages, as the case may be, then to any Losses incurred by Landlord, then to other amounts that are not considered "Rent" by applicable law, then to delinquent Rent and then to current Rent.

D. Credit Reporting. Landlord may report all Lease defaults, including unpaid Rent, other amounts due and/or insufficient funds or returned checks, to any national or local credit bureau or other similar collection or credit reporting service for permanent recordation in Resident's credit record as well as to any national or local tenant reporting bureau. Pursuant to Civil Code §1785.26, Resident is notified that a negative credit report reflecting on Resident's credit record may be submitted in the future to a credit reporting agency if Resident fails to fulfill the terms of any obligations to Landlord.

17. MULTIPLE RESIDENTS. If there is more than one Resident, each Resident is jointly and severally liable for all obligations under this Lease. The violation of this Lease by any Resident Party is a violation by all Residents. Requests and notices from Landlord to any Resident constitute notice to all Residents and Additional Live-In Residents. A notice from, consent by (including consent for entry into the Apartment Home) or action taken by any Resident is a notice from, consent by, or action of all Residents. All demonstrations, inspections and explanations made by Landlord to one of the Residents shall bind all Residents with the same force and effect as if made to each Resident. An Additional Live-In Resident who has permanently moved out according to an affidavit signed by a Resident is, at Landlord's option, no longer entitled to occupancy of or keys to the Apartment Home. The termination of such person's right of occupancy of the Apartment Home shall not release such person from any obligations under this Lease unless specifically agreed in writing by Landlord. In eviction suits, any one Resident is the agent of all other Residents in the Apartment Home for purposes of judicial service of process.

18. ASSIGNMENT. Resident shall not sublet the Apartment or assign this Lease for any length of time, including, but not limited to, renting out the Apartment using a short term rental service such as airbnb.com, VRBO.com or homeaway.com. Any purported assignment or sublet of this Lease or the Apartment Home without the prior written consent of Landlord is null and void.

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A departing Resident's claim to any Deposit automatically transfers to the replacing Resident upon the date of Landlord's written approval of such replacement, and the departing Resident shall have no rights or claims to the Deposit against Landlord.

#### 19. RELEASE OF RESIDENT

A. No Release. Resident shall not be released from this Lease on any grounds, including voluntary or involuntary school withdrawal or transfer, voluntary or involuntary business transfer, layoff or termination, marriage, divorce, marriage reconciliation, loss of co-residents, bad health, or any other reason (except as expressly stated in this section).

B. Limited Exception-Military Servicemembers. Resident may terminate this Lease before the Lease End Date by providing the written notice required below if:

- (i) Resident enters military service of the United States (as defined in the Servicemembers' Civil Relief Act) after Resident enters into this Lease; or
- (ii) Resident was a member of the military service of the United States when the lease was executed and thereafter receives: (I) Orders for a permanent change of station; or (II) Orders to deploy with a military unit for at least 90 days.

In order to terminate this Lease under this "Limited Exception-Military Servicemembers", Resident must give Landlord written notice of termination. The termination shall be effective 30 days after the first date on which the next rental payment is due and payable. (For example, if Resident gives Landlord notice on March 15th, this Lease would terminate on May 1 with respect to Resident and Resident's dependents). At the time Resident gives such notice, Resident must furnish Landlord with a copy of the servicemember's military orders proving eligibility for the Limited Exception under paragraph 19B(i) or (ii). Military permission for base housing does not constitute a permanent change of station order. The release under this subsection applies only to the Resident in U.S. military service and such Resident's dependents (including Resident's spouse).

C. Death of All Residents. If all Residents are no longer living, this Lease shall terminate upon the death of the last such Resident, except for those provisions of Section 15 applicable to a deceased Resident's personal property.

#### 20. MOVE OUT PROCEDURES

A. Move Out Cleaning and Inspection. Resident shall comply with the terms of Landlord's move-out instructions and otherwise peacefully vacate and surrender possession of the Apartment Home in the same condition as when leased, except for ordinary wear and tear. Resident shall clean thoroughly the Apartment Home, including bathrooms, kitchen appliances, windows, furniture, patios, garage and storage rooms, to the same level of cleanliness that existed at the time Resident first took occupancy. After Resident vacates the Apartment Home, Landlord will inspect the Apartment Home and shall complete the Condition Form. Resident may request in writing an initial inspection to take place no earlier than two weeks before the end of the tenancy as provided by law. Any verbal estimate of repairs, charges or deductions given by Landlord's Related Parties shall not bind Landlord.

B. Deductions. In addition to other amounts which Landlord may deduct from the Deposit pursuant to this Lease, Landlord may deduct the following items from the Deposit:

- (i) the cost of cleaning the Apartment Home;
- (ii) Landlord's actual expenses for repairs and damages beyond normal wear and tear to the Apartment Home or its contents;
- (iii) charges for changing the locks if Resident does not leave the keys;
- (iv) damages resulting from Resident's breach of any provision of this Lease;
- (v) any unpaid Rent or other amounts due to Landlord under the terms of this Lease; and
- (vi) to remedy future defaults by Resident of any obligation under this Lease to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear.



If lawful deductions exceed the total amount of the Deposit, Resident shall pay such excess amount upon written demand by Landlord.

C. Surrender. "Surrender" or "vacating" of the Apartment Home shall occur upon the first to occur of the following events:

- (i) all Residents who signed this Lease live elsewhere and the Lease Term has expired or been terminated; or
- (ii) all keys, access cards and remote openers have been turned in.

## 21. SMOKE FREE AREAS.

A. Purpose. The parties want to reduce or eliminate (a) the irritation and known health effects of secondhand smoke; (b) the increased maintenance, cleaning and redecorating costs from smoking; and (c) the increased risk of fire and insurance costs associated with smoking.

B. Smoking Definition. "Smoke" or "Smoking" as those terms are used in this Lease means inhaling, exhaling, breathing, or carrying any lighted cigar, cigarette, pipe, or other tobacco or medicinal marijuana product or similar lighted product, or any e-cigarette or similar vaporizer in any manner or in any form.

C. Smoking Prohibited. Resident, Additional Live-In Residents, guests or invitees may not smoke anywhere in the Smoke-Free Areas, identified in the Definition Annex. Resident must inform guests and invitees of the no-smoking policy within the Smoke-Free Areas.

D. Landlord Rights. Landlord will have the right, but not the obligation, to enforce the terms of this Section 21. A material breach of this Section 21 will be a material breach of the Lease and grounds for immediate termination of the Lease. Landlord shall also have the right to fine Resident \$250 for each breach of this Addendum. Additionally, Resident will be responsible for any damage caused by Resident's breach. These damages may include (but are not limited to) the cost to clean items discolored or smelling of smoke (such as carpets, draperies, walls and other items), repair burn marks, and remove cigarette butts.

E. No Guarantee or Warranty. Neither Landlord nor Landlord's Representatives guarantee or warranty Resident's health or the smoke-free condition of the designated smoke-free areas. Resident acknowledges that the success of Landlord's efforts to make the designated areas smoke-free is dependent on voluntary compliance by Resident and others. Resident acknowledges that Landlord's adoption of a smoke-free living environment and the efforts to designate the Community or portions thereof as smoke-free do not in any way change the standard of care that Landlord would have to Resident's household to render buildings and Apartment Home designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental premises. Landlord specifically disclaims any implied or express warranties that the building, common areas, or Resident's Apartment Home will have any higher or improved air quality standards than any other rental property. Landlord cannot and does not warrant or promise that the Apartment Home or common areas will be free from secondhand smoke. Resident acknowledges that Landlord's ability to police, monitor, or enforce the agreements of this Section is dependent in significant part on voluntary compliance by Resident and Resident's guests. Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are hereby notified that Landlord does not assume any higher duty of care to enforce this Section than any other Landlord obligation under the Lease.

F. Current Residents. Residents currently living in designated smoke-free areas under previous leases may not immediately be subject to the no-smoking policy. As current residents in designated smoke-free areas enter into new leases, or convert to month-to-month tenancies, Landlord intends to implement the smoke free policy as to those residents. As current residents in designated smoke-free areas vacate, Landlord intends to implement the smoke-free policy as to those apartment homes.

## 22. MISCELLANEOUS.

A. Casualty. If the Apartment Home becomes unfit for occupancy, as determined by Landlord, whether by casualty or otherwise, except as otherwise provided by applicable law Landlord may refuse to repair the same and, by giving written notice to Resident, terminate this Lease.

B. Notice Requirement. All notices by Resident to Landlord or Landlord's Representative shall be in writing and delivered to the location where Rent is paid or to Landlord's E-Mail Address. Notices by Landlord to Resident

shall be served in any manner permitted under applicable law. Facsimile signatures are binding on all notices.

C. Entire Agreement. This Lease, together with the Definition Annex, and Community Rules, and addenda and exhibits attached to this Lease, are a part of, and constitute, the entire agreement between Landlord and Resident with respect to the lease of the Apartment Home, and are considered the "Lease" for this agreement. No prior or contemporaneous agreements or understandings are effective for any purpose. The Lease may not be amended or supplemented except by an agreement in writing signed by Resident and Landlord. No statement of any of Landlord's Related Parties shall modify, add, or delete provisions of this Lease unless in writing signed by Resident and Landlord. This Lease may be executed in multiple copies.

D. Rental Application. Resident represents and warrants that all of Resident's statements in the rental application are true and correct and understands that Landlord relied upon these statements in the execution of this Lease. If this Lease is executed prior to approval of Resident's rental application by Landlord, this Lease shall not become effective until Landlord has either tendered the Apartment Home to Resident or approved Resident's application(s) in writing. If any information stated in the rental application changes during the Lease Term, Resident shall immediately notify Landlord in writing of the change.

E. No Claims Against Landlord's Related Parties. To the maximum extent permitted by law, Resident waives any right to make any Claim against or seek to impose any personal liability upon any of Landlord's Related Parties and waives any right to specific performance or injunctive relief with respect to this Lease.

F. Waiver. The waiver by Landlord of any term contained in this Lease shall not be effective unless in writing and signed by Landlord, and any such waiver shall not be a waiver of any other term or any subsequent breach of the same or any other term of this Lease. The acceptance of Rent or other amounts due from Resident to Landlord shall not be deemed a waiver of any preceding default by Resident of any term of this Lease, other than the failure of Resident to pay the particular Rent or amount so accepted, regardless of Landlord's knowledge of such preceding default at the time of the acceptance of such Rent or other amounts.

G. Landlord's Representative. Landlord's Representative acts only as agent for Landlord. Responsibility for all obligations of Landlord, including Deposits, rests entirely with Landlord. Landlord's Representative shall have all the rights, powers and benefits of Landlord under this Lease.

H. Binding Effect. The covenants and conditions contained in this Lease shall inure to the benefit of and bind the successors and permitted assigns of the parties to this Lease.

I. Jurisdiction/Governing Law. Landlord and Resident agree that any action to enforce or interpret, or related to, this Lease shall be brought in a court of competent jurisdiction in the state in which the Community is located. Landlord and Resident consent to personal jurisdiction and venue in such courts. This Lease shall be governed by and construed in accordance with the laws of the state where the Community is located, without giving effect to the principles of conflict of laws thereof.

J. Continuing Liability. No termination or expiration of this Lease shall relieve Resident of any obligation to pay or reimburse sums to Landlord or to indemnify or hold harmless or defend Landlord's Related Parties from any Loss, where such obligation accrues or arises prior to such termination or expiration of this Lease.

K. Assignment By Landlord. Nothing in this Lease restricts Landlord's right to sell, convey, ground lease, hypothecate, assign or otherwise deal with the Apartment Home or Community or Landlord's interest under this Lease. Upon termination of Landlord's interest in the Community, Landlord will handle the Deposit as required by applicable law. A sale, conveyance, or assignment of the Apartment Home or Community will release automatically Landlord from future liability under this Lease. Except as provided by applicable law, Resident shall look solely to Landlord's transferee for performance of Landlord's obligations relating to the period after such effective date. This Lease will not be affected by any such sale, conveyance, ground lease hypothecation or assignment, and Resident will attorn to Landlord's transferee. Resident accepts the Apartment Home subject to and subordinate to any existing or future recorded mortgage, deed of trust, easement, lien or



encumbrance, or, if determined by any lender, superior to any existing or future mortgage or deed of trust.

L. Standard of Decision. Unless otherwise expressly provided in this Lease, if Landlord has discretion with respect to any matter, or any consent or approval is to be made by Landlord, such discretion, consent or approval shall be in Landlord's sole discretion.

M. Examples Are Not Limitations. All examples of items or matters included in a description are given as examples only, without limitation as to the description given of such matter.

N. DISCLOSURE OF RESIDENT INFORMATION. RESIDENT ACKNOWLEDGES AND AGREES THAT LANDLORD MAY DISCLOSE INFORMATION WITH RESPECT TO RESIDENT AS REQUIRED BY LAW (SUCH AS SEARCH WARRANTS OR SUBPOENAS), IN COMPLIANCE WITH LAW ENFORCEMENT REQUESTS OR LEGAL NOTICES, WITH RESPECT TO AFFORDABLE OR SUBSIDIZED HOUSING-RELATED GOVERNMENT REQUESTS OR AS AUTHORIZED BY RESIDENT, INCLUDING RENTAL HISTORY.

O. Background Investigation. Resident acknowledges and agrees that, as stated in Resident's rental application, and to the extent permitted by law, Landlord may request an investigative consumer report containing information obtained through personal interviews with Resident's landlord, employer or others with whom Resident is acquainted. This inquiry may include information as to Resident's character, general reputation, personal characteristics, mode of living and credit report. The federal Fair Credit Reporting Act requires Landlord to provide Resident with additional information about the nature and scope of the investigation if Resident provides a written request of Landlord within a reasonable time. In addition, upon written request, Landlord will notify Resident if an investigative consumer report has been obtained relating to Resident, and provide Resident with the name and address of the consumer reporting agency that prepared the report. Resident also may request a copy of any consumer report or investigative consumer report relating to Resident directly from the consumer reporting agency. Resident acknowledges that it received a summary of Resident's rights under the Fair Credit Reporting Act when Resident executed Resident's rental application. Resident authorizes Landlord, or its agent, attorney or assign to order and review one or more consumer reports relating to Resident (including credit history, criminal history and rental history, including other properties owned by property owners affiliated with Landlord). Resident authorizes Landlord, or its agent, attorney or assign to order or prepare, and review, investigative consumer reports relating to Resident. Resident understands and authorizes Landlord, or its agent, attorney or assign to continue to obtain or prepare consumer reports and investigative consumer reports on Resident for the duration of this Lease and at any time thereafter, including for the purposes of collection of amounts Resident may owe under any lease or other agreement. Resident further authorizes and directs all employers, financial institutions, banks, creditors, and residential managers/landlords to release any and all information relating to Resident to Landlord or its agent, attorney or assign. The provisions of this section shall survive the termination of this Lease for the purpose of Landlord pursuing remedies against Resident for breach of this Lease.

P. State Law. To the extent that federal law or the laws of the state, county or municipality in which the Community is located impose any requirement on Landlord or Resident that is contrary to any provision of this Lease or prohibit the inclusion in any lease of any provision included in this Lease, this Lease shall be deemed to be amended so as to comply with such law. The reformation of any provision of this Lease shall not invalidate this Lease. If an invalid provision cannot be reformed, it shall be severed and the remaining portions of this Lease shall be enforced.

Q. Fair Housing. Landlord adheres to the federal Fair Housing Act which stipulates that it is illegal to discriminate against any person in housing practices because of race, color, religion, sex, national origin, disability or familial status, and to California fair housing laws which prohibit discrimination based on ancestry, gender, marital status, sexual orientation, and source of income. All requirements of the Fair Housing Act and all other federal, state and local laws pertaining to civil rights of the Community's applicants and residents will be followed during all leasing and management activities of the Community.

R. Prorations. Any proration of Rent under this Lease shall be calculated by dividing the Rent by 30 days and multiplying that amount by the applicable number of days in the month.

S. Other Deposits. If Landlord collects a deposit, other than the Deposit, pursuant to an addendum to this Lease (an "Other Deposit"), then, to the maximum extent permitted by law, Landlord may apply the Other Deposits to any amounts owed by Resident to Landlord for which the Deposit may be used.

T. Attorneys Fees. In any legal proceeding brought by either Landlord or Resident against the other, in addition to any other relief granted, the prevailing party will recover reasonable attorneys' fees from the other party, not to exceed the Attorney's Fee Cap.

U. Registered Sex Offenders Notice. Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at [www.meganslaw.ca.gov](http://www.meganslaw.ca.gov). Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides.

V. Proposition 65 WARNING: THIS APARTMENT COMMUNITY CONTAINS CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, BIRTH DEFECTS AND REPRODUCTIVE HARM. THESE CHEMICALS MAY INCLUDE FORMALDEHYDE, TOBACCO SMOKE, UNLEADED GASOLINE, SOOTS, TAR AND MINERAL OILS. THE CHEMICALS ARE CONTAINED IN SOME OF THE BUILDING MATERIALS, IN SOME OF THE PRODUCTS AND MATERIALS USED TO MAINTAIN THE PROPERTY AND IN EMISSIONS, FUMES, AND SMOKE FROM TENANT ACTIVITIES, INCLUDING, BUT NOT LIMITED TO MOTOR VEHICLE USES, BARBEQUES AND TOBACCO PRODUCTS. THESE CHEMICALS MAY INCLUDE, BUT ARE NOT LIMITED TO, CARBON MONOXIDE, ASBESTOS AND LEAD BASED PAINT.

W. Asbestos. This Community and the Apartment Home may contain asbestos, a chemical known to the State of California to cause cancer. Disturbance or damage to certain interior apartment surfaces may increase the potential exposure to asbestos and other chemicals. Resident(s) and their guests, employees and contractors, may not damage or disturb the ceiling. Prohibited activities include:

- (i) piercing the surface of the ceiling by drilling or any other method;
- (ii) hanging plants, mobiles, or other objects from the ceiling;
- (iii) attaching any fixtures to the ceiling;
- (iv) allowing any objects to come in contact with the ceiling;
- (v) permitting water or any liquid, other than ordinary steam condensation, to come in contact with the ceiling;
- (vi) painting, cleaning, or repairing any portion of the ceiling;
- (vii) replacing light fixtures in the ceiling; and
- (viii) undertaking any activity which results in building vibrations which may cause damage to the ceiling.

Resident must notify Landlord immediately:

- (i) if there is any damage to or deterioration of the ceiling in the Apartment Home, including any flaking, loose, cracking, hanging or dislodged ceiling material, and any water leaks or stains in the ceiling; or
- (ii) upon the occurrence of any of the events described in the paragraph above.

X. Communication with Resident. Resident authorizes Landlord and Landlord's Representative to use the contact information above in Paragraph 6 of the Definition Annex, and also the Apartment Home address for purposes of contacting applicant. Landlord may use telephone, email, US mail, or any other means of communication. Resident agrees to promptly update Landlord with any new contact information during the Term and any extension.

Y. Time. Time is of the essence of the performance of each party's obligations under the Lease. All time periods under this Lease shall be calculated in calendar days.

(California - Rev. 5/2014)

DocuSigned by:

Rory Cutaja

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DocuSigned by:

Matthew J. Lora

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**RENEWAL AMENDMENT**

THIS RENEWAL AMENDMENT (this "**Amendment**") to the Apartment Lease dated 06/22/2017 (the "**Lease**"), by and between Landlord and Resident, is incorporated and made an integral part of the Lease. Any word with its initial letter capitalized and not defined in this Amendment shall have the meaning given to it in the Lease.

A. **Landlord:** La Park La Brea B LLC

B. **Resident(s):** Rory Cutaia

C. **Additional Live-In Residents:**

First Name	Last Name

D. **Community:** Palazzo East at Park La Brea, The(C)-042667

E. **Apartment Home:** 344 South Hauser, Bldg 5 #5-414

Los Angeles CA 90036

F. **Renewal Lease Start Date:** 05/01/2018

G. **Renewal Lease End Date:** 07/29/2019

H. **Deposit (to be completed only if modified):** Not Modified

I. **Renewal Rent:** \$4743.00

J. **Short Term Renewal Rent:** \$600.00 plus the higher of the Fair Market Rent or the current monthly Rent being paid by Resident immediately prior to the commencement of the two-Month Renewal Term. The "Fair Market Rent" equals the rent that Landlord would charge for an apartment home comparable to the Apartment Home on the date that Landlord provides notice to Resident of the Short Term Renewal Rent.

K. **Late Charges Date:** The 4th day of the month.

L. **Modified Fees (indicate as applicable):**

<u>Not Modified</u>	<b>Fee</b>	
	Late Charge:	<u>\$150.00</u>
<u>Not Modified</u>	NSF Charge:	<u>25.00</u>

Other Fee (describe):

M. **Early Termination Option Fee:** Three month's Rent at the rate current when the Early Termination Option is exercised.

N. **Utilities To Be Provided By Landlord:** None

O. **Pest Control** [check as applicable]:

Landlord has not contracted with a registered structural pest control company to provide periodic pest control services to the Community. Resident agrees to notify Landlord immediately upon the discovery of any insect or other pest infestation on the premises.

Landlord has contracted with a registered structural pest control company to provide pest control services to the Community periodically and acknowledges receiving a written notice regarding pesticides used in the Community as provided for under California Business and Professions Code §8538 and California Civil Code §1940.8.

Resident agrees to pay Landlord upon demand for pest control as additional rent.

P. **Smoke-Free Areas:** The following areas are designated smoke-free areas:

- The Apartment Home  
 The building in which the Apartment Home is located  
 All common areas  
 The entire Community, including individual Apartment Homes and common areas, except the following areas: N/A

**RESIDENT HAS READ AND SHALL ABIDE BY ALL OF THE RULES, REGULATIONS AND AGREEMENTS IN THIS AMENDMENT AND THE LEASE.**

If you have any feedback on your apartment home or community, please contact the community manager at the on-site management office. If you would like to talk with the Aimco leadership team to further discuss any concerns, or if there's something we're doing well that you'd like to tell us about, please visit [www.aimco.com/feedback](http://www.aimco.com/feedback) and the Aimco leadership team will contact you.

(California - Rev. 5/2017)



**RESIDENT:**

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

**LANDLORD:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
*Print Name*  
Title: Authorized Representative  
Date: \_\_\_\_\_

**RESIDENT AND LANDLORD AGREE AS FOLLOWS:**

- 1. Renewal Amendment.** This Amendment is a Renewal Amendment as described in the Lease.
- 2. Lease Term.** The Lease Term is extended to the Renewal Lease End Date. The period commencing on the Renewal Lease Start Date and terminating on the Renewal Lease End Date (or sooner as provided in the Lease) is referred to as the "Renewal Term".
- 3. Security Deposit.** If there has been a change in the Deposit, the change is indicated above. If the Deposit has increased, Resident shall deliver the difference to Landlord prior to the Renewal Lease Start Date. If the Deposit has decreased, Landlord shall refund the difference to Resident within 21 days after the Renewal Lease Start Date.
- 4. Renewal Rent.** Rent for the Renewal Term shall be the Renewal Rent stated in this Amendment. If the Renewal Lease Start Date is not the first day of the month, then the Rent due for the month in which the Renewal Lease Start Date occurs shall be the then current monthly Rent prorated from the first day of the month through the Lease End Date (or the then Renewal Lease End Date, if applicable) plus the Renewal Rent prorated from the Renewal Lease Start Date through the end of the month. The monthly Rent shall be the Renewal Rent commencing on the first day of the first full month of the Renewal Term and thereafter. If the Lease ends on a day other than the last day of a month, Rent for the final month shall be prorated from the first day of the final month through the Renewal Lease End Date.
- 5. Modified Fees.** The fees marked as Modified Fees above shall be at the amounts set forth above for the Renewal Term. If the Renewal Lease Start Date is the first day of the month, then the Modified Fees shall begin on that date. If the Renewal Lease Start Date is not on the first day of the month, then the Modified Fees shall commence on the first day of the first full month after the Renewal Lease Start Date occurs and any fees due for the month in which the Renewal Lease Start Date occurs shall be the then current monthly fees.
- 6. Early Termination Option Fee.** The Early Termination Option Fee shall be the amount set forth above.
- 7. Amended Provisions:** The following provisions of the Lease have been amended and shall read in their entirety as follows:

Section 2.B Termination Notice; Automatic Short-Term Renewal. If Landlord or Resident intends to terminate the Lease on the Lease End Date, the terminating party must give written notice to other party at least 60 days before the Lease End Date of the terminating party's intent to terminate the Lease (the "Termination Notice"). This notice requirement contractually modifies any statutory termination notice period. Resident shall vacate the Apartment Home by the Lease End Date or the end of the Two-Month Renewal Term (as applicable). If Resident gives a proper 60 day Termination Notice, fully complies with the Lease, and vacates as agreed, Resident will be relieved of further liability to Landlord for future Rent accruing after the termination date. If Resident provides the Termination Notice less than a full 60 days before the Lease End Date, then Landlord may charge the Resident an amount equal to 1 day of Short Term Renewal Rent for each day of the 60-day notice period that extends beyond the Lease End Date. The above charge is intended to be an enforceable liquidated damages amount. Actual damages of Landlord's lost rent caused by the Resident's failure to provide 60 days' notice of Resident's intent to vacate would be difficult to determine with any certainty, and the charge is a reasonable estimate of such damages.

If Resident fails to provide written notice of Resident's intent to vacate at least sixty (60) days before the end of the Lease Term or any Two-Month Renewal Term, as applicable, then except as may otherwise be allowed by Owner in its sole discretion as provided in the first paragraph of this Section 2.B, this Lease shall automatically renew for additional two (2) month terms (each a "Two-Month Renewal Term") upon the Lease End Date or the end of each Two-Month Renewal Term, as applicable. Such renewals shall automatically continue until either (i) a written notice of termination is given by either Resident at least 60 days in advance in accordance with the first paragraph of this Section 2.B, (ii) a written notice of termination is given by Landlord at least 60 days in advance of the termination date, or (iii) a Renewal Amendment is signed by Resident and Landlord. During the Two-Month Renewal Term, monthly Rent will be increased to the Short Term Renewal Rent. If Landlord does not give written notice of the Short Term Renewal Rent amount before the applicable Two-Month Renewal Term, then the monthly Rent for such Two-Month Renewal Term shall be deemed to be the same as the monthly Rent in effect immediately preceding such Two-Month Renewal Term.



Section 3.A Monthly Rent. Resident shall pay the Rent specified in the Definition Annex each calendar month. Resident shall pay the first month's Rent before the Lease Start Date. If Resident does not pay the first month's Rent before the Lease Start Date, Landlord will have no obligation to give Resident possession of the Apartment Home. Landlord may keep any funds paid by Resident necessary to compensate Landlord for Resident's breach of this Lease, and Landlord may pursue any other damages allowed by law. If the Lease Start Date is not the first day of the month, Rent shall be prorated from the Lease Start Date through the last day of the month and shall be payable on the Lease Start Date. If this Lease ends on a day other than the last day of a month, Rent for the final month shall be prorated from the first day of the final month through the Lease End Date. Except for a payment due date stated in a separate utility bill sent to Resident, and except for the first month's Rent, Rent and all other amounts to be paid by Resident to Landlord under this Lease are due and payable in advance and without demand, setoff or deduction at the Landlord's Address on the 1<sup>st</sup> day of each calendar month, and Resident shall be in default under this Lease if Resident fails to pay by that date. Landlord may require Resident to pay Rent to an address other than Landlord's Address specified above. If Resident delivers Rent or any other payment hereunder by mail, Resident ASSUMES THE RISK that the Rent or other payment is lost or delayed in delivery, and Resident shall be liable and responsible for the failure to make such lost or delayed Rent or other payment. Landlord may require Resident to pay Rent and other amounts due under this Lease by certified check, cashier's check, money order, or direct debit and by one monthly payment rather than multiple payments. If Landlord elects (in its sole discretion) to permit Resident to pay by personal check, Landlord may assess a convenience fee for such payment. Landlord may convert Resident's check to an electronic deposit or an electronic transmission (ACH) for processing. Except as otherwise provided by law, Landlord shall not be liable for any Loss related to any inaccuracies or mistakes made in the inputting of data or electronic deposit of such check, except to the extent caused by the gross negligence or willful misconduct of Landlord. If Landlord so elects, all payments of Rent, together with any utility charges payable by Resident to Landlord pursuant to this Lease, shall be made by Automated Clearing House ("ACH") debit. Following such election by Landlord: (i) Resident shall promptly complete an automatic debit form provided by Landlord authorizing Landlord to establish arrangements for the transfer of payments of Rent and such utilities by ACH debit initiated by Landlord from an account in the name of Resident established at a United States Bank; (ii) Landlord may, at its option, refuse any amount tendered by Resident in any form other than an ACH debit; and (iii) for purposes of this Lease (including, without limitation, the default, Late Charge, Daily Late Fee, NSF Charge, Rent Damages and Enforcement Costs provisions hereof), in the event that Landlord is unable, through no fault of Landlord or its bank, to successfully process any ACH debit hereunder, Resident shall be deemed not to have paid, and Landlord shall be deemed not to have received, such payment of Rent and/or utilities.

Section 5.A Landlord's Payment for Utilities. Landlord shall pay only for those utilities identified in the Definition Annex, which shall not include telephone. Resident gives Landlord the right to select any utility provider and change the same from time to time without notice. Resident shall, subject to the direction of Landlord, pay for all other utilities (including related deposits, charges, fees and services). The records and all meters in the Community are presumed to be correct for all purposes. Resident shall transfer to Resident's name any utility(ies) required by Landlord to be so transferred. If Resident fails to transfer such utility(ies) by the time requested by Landlord, Landlord shall have the right to fine Resident an amount not to exceed \$25.00 after 2 days, plus \$25.00 after 30 days, plus \$25.00 after 60 days.

Section 5.B(i) Certain utility services, such as water, wastewater/sewer, trash removal, electric, cable TV, pest control, electric, cable TV, HVAC and gas (including, but not limited to, gas for heating hot water), may, from time to time, be billed by Landlord to Resident. The Apartment Home may not receive all of the utilities listed in the preceding sentence or the Definition Annex or may receive additional utilities. Resident may be required to contract with or pay directly certain utility providers. Resident shall pay Landlord for those utilities billed by Landlord or Landlord's agent for such billing (a "Utility Bill"). Such Utility Bill may be issued separate and apart from any invoice or bill for rent, or may be part of a consolidated statement containing rent, utilities, pest control and other applicable charges. These additional charges where allowed by law are considered to be additional rent and are to be paid in addition to the base rent. Resident understands that Resident may be required to pay a consolidated statement fee of \$3.75 which may be in addition to or in lieu of other applicable fees.

Section 5.B(iv) As a regular part of each monthly Utility Bill, Resident may be charged, in which case Resident shall pay, a monthly service charge of up to \$4.75 in addition to the utility service charges for which Resident is billed. The monthly service fee is for administration, billing, overhead and similar expenses and charges incurred by Landlord for providing or processing Utility Bills. Landlord may use a third party billing provider to provide all or part of the billing services directly.

Section 18 ASSIGNMENT. Resident shall not sublet the Apartment or assign this Lease for any length of time, including, but not limited to, renting out the Apartment using a short term rental service such as airbnb.com, VRBO.com or homeaway.com. Any purported assignment or sublet of this Lease or the Apartment Home without the prior written consent of Landlord is null and void. A departing Resident's claim to any Deposit automatically transfers to the replacing Resident upon the date of Landlord's written approval of such replacement, and the departing Resident shall have no rights or claims to the Deposit against Landlord.

Section 21.B Smoking Definition. "Smoke" or "Smoking" as those terms are used in this Lease means inhaling, exhaling, breathing, or carrying any lighted cigar, cigarette, pipe, or other tobacco or marijuana product or similar lighted product, or any e-cigarette or similar vaporizer, in any manner or in any form.

8. New Provisions. The following provisions are hereby added to the Lease:

- a. Additional Deposit. If Resident is late with Rent or any other amounts due under this Lease more than two (2) times during the Lease Term, Landlord shall have the right to immediately increase the Deposit by one-half (1/2) of the monthly Rent (provided that at no time shall the Deposit exceed the maximum security deposit allowed under applicable law). Resident shall deliver such additional Deposit to Landlord within five (5) days after demand.
- b. Disclosures re. Water Submeters. The following provisions shall apply only if the Apartment Home is submetered for water service:



- (i) Water will be billed separate from rent;
  - (ii) The average monthly bill for water service for an apartment unit at the Community comparable to the Apartment Home is \$124.78.
  - (iii) An average family of four uses 200 gallons of water per day;
  - (iv) Charges for water service shall be paid at the same time, place and manner as base rent;
  - (i) Resident shall promptly report to Landlord or Landlord's representative any water leaks in the Apartment Home, which will be repaired by Landlord within 21 days.
  - (ii) Upon Resident's request, Landlord will provide the location of Resident's submeter, calculations used to determine Resident's monthly bill, and the date Resident's submeter was last certified and the date it is next scheduled for certification (if known) upon inquiry.
  - (iii) If Resident believes that the submeter reading is inaccurate or the submeter is malfunctioning, the Resident shall first notify the Landlord in writing and request an investigation. If an alleged submeter malfunction is not resolved by the Landlord, Resident may contact the local county sealer and request that the submeter be tested. County sealer can be contacted at (626) 575-5451.
  - (iv) Residents may contact the Utility Billing Company with questions regarding their billing any time between 5:00 A.M. and 7:00 P.M. MT at (866) 947-7379, via letter to P.O. Box 4718, Logan, UT 84321, or email at [service@conservice.com](mailto:service@conservice.com).
  - (v) The above is only a general overview of the laws regarding submeters. The complete law can be found at Chapter 2.5 (commencing with Section 19.54.201) of Title 5 of Part 4 of Division 3 of the Civil Code, available online or at most libraries.
9. **General.** As of the Renewal Lease Start Date, this Amendment supersedes all prior renewal addenda with respect to the matters stated in this Amendment. Except as expressly modified by this Amendment, all terms and conditions of the Lease remain unchanged, and the provisions of the Lease are applicable to the fullest extent not inconsistent with this Amendment. If a conflict between the terms of this Amendment and the Lease exists, the terms of this Amendment shall control the matters specifically governed by this Amendment. If any provision of this Amendment is invalid or unenforceable under applicable law, such provision shall be amended to comply with such law. The reformation of any provision of this Amendment shall not invalidate this Amendment or the Lease. An invalid provision that cannot be reformed shall be severed and the remaining portions of this Amendment shall be enforced. Any breach of the terms of this Amendment shall constitute a breach of the Lease to the same extent and with the same remedies to Landlord as provided in the Lease or otherwise available at law or equity. This Amendment does not limit any of Landlord's rights or remedies stated in the Lease, which are cumulative of those stated in this Amendment.  
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DocuSigned by:  
*Rory Cutiaia*  
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DocuSigned by:  
*Matthew J. Loun*  
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## MARKETO LAUNCHPOINT ACCELERATE PROGRAM AGREEMENT

This Marketo LaunchPoint Accelerate Program Agreement ("**Agreement**") is entered into as 1 April 2018 (the "**Effective Date**") by and between Marketo, Inc. with offices at: 901 Mariners Island Blvd., #500 San Mateo, CA 94404 ("**Marketo**"), and nFusz, Inc. having offices at: 344 Hauser Blvd, Suite, Suite 414, Los Angeles, CA 90036 ("**Partner**") (individually a "**party**" or collectively the "**parties**").

WHEREAS, Marketo provides a marketing automation solution and associated services to its customers;

WHEREAS, Partner desires to join the Marketo LaunchPoint Accelerate Program ("**Accelerate Program**"), under which Partner will be entitled to certain sales and marketing benefits and to use Marketo technology in accordance with the terms of this Agreement.

NOW, THEREFORE, Marketo and Partner agree as follows:

### 1. Definitions

"**Accelerate Program Fees**" has the meaning set forth in Section 5 (Fees) of Exhibit 2 (Accelerate Program Fees).

"**Affiliates**" means any legal entity directly or indirectly controlling, controlled by, or under common control with a party, where "control" means the ownership of a majority share of the voting stock, equity or voting interests of such entity.

"**Confidential Information**" has the meaning set forth in Section 9 (Confidentiality).

"**Connector**" means a standalone logical connection between the Partner Product and the Marketo Platform.

"**Ecosystem**" means the listing of Marketo solution and service partners as substantially described at: <https://launchpoint.marketo.com/>.

"**Marketo Accelerate Program Technologies**" means the fields, objects, activities, workflows, and triggers authored by Marketo which are generally described at: <http://developers.marketo.com>. For the avoidance of doubt, the Marketo Accelerate Program Technologies do not include any Marketo Platform Technologies.

"**Marketo LaunchPoint Page Exhibit**" means Exhibit 4 (Marketo LaunchPoint Page Exhibit).

"**Marketo Platform**" means the products and services provided by Marketo to its customers, excluding any products or services owned by third parties or Partner.

“**Marketo Platform Technologies**” means APIs, and web hooks authored by Marketo and generally described at: <http://developers.marketo.com/>.

“**Marketo Technology**” or “**Marketo Technologies**” means the Marketo Accelerate Program Technologies, Marketo Platform, and Marketo Platform Technologies.

“**Partner Product**” means a Partner software product or service that: (i) Partner generally makes available to its customers; and (ii) integrates or interoperates with the Marketo Platform by using the Marketo Platform Technologies and/or Marketo Accelerate Program Technologies.

“**Page**” means a web page listing within the Ecosystem identifying Partner Product, marketing copy, a screen shots, video and other content on, through and within this web-page listing.

“**Term**” has the meaning set forth in Section 6.a.

## 2. Accelerate Program Technology and Trademark Licenses

- a. Commercial Platform Technologies License. Marketo grants to Partner a non-exclusive, world-wide, non-assignable, terminable license, under Marketo’s copyrights, to use Marketo Platform Technologies (and to sublicense this use) in combination with Partner Products as provided to Partner customers. Partner may only grant a sublicense to its customers who use the Marketo Platform Technologies in combination with the Partner Product. Further, this sublicense is subject to the limitations related to Application Programming Interfaces (“**APIs**”) imposed by Marketo upon a Marketo customer as part of a subscription, or other relevant term of use. As part of this license, Partner is required to associate an “API Key” (“**Tag**”) with each API call that the Partner Product makes to the Marketo Platform so as to uniquely identify this product (“**Tagged API Calls**”). Partner shall implement these Tagged API Calls with thirty (30) days of the Effective Date. Any action by Partner to circumvent or prevent the tracking of API usage using these Tagged API Calls is strictly prohibited.
- b. Accelerate Program Technology License. Marketo grants Partner a non-exclusive, world-wide, non-assignable, terminable license, under Marketo’s copyrights, to both use and create derivatives of the Marketo Accelerate Program Technologies in combination with Partner Products during the Term (the “**Accelerate Technology License**”). Partner may also sublicense the Accelerate Technology License to Partner’s customers who use Partner Products in combination with the Marketo Accelerate Program Technologies,



provided that Partner will be responsible for its customers' compliance with the Accelerate Technology License.

- c. Enhanced Marketo Platform Technologies License. Marketo grants Partner a non-exclusive, world-wide, non-assignable, terminable license, under Marketo's copyrights, to use the Marketo Platform Technologies in combination with Partner Products during the Term (the "**Enhanced Marketo Platform Technologies License**") to support the extension (e.g., the addition of new data fields) of data structures, data types, or other data models provided by Marketo. Partner may also sublicense the Enhanced Marketo Platform Technologies License to Partner's customers who use Partner Products in combination with the Marketo Platform Technologies, provided that Partner will be responsible for its customers' compliance with the Enhanced Marketo Platform Technologies License.
- d. Trademark License. Each party grants to the other a non-exclusive, world-wide, non-assignable, terminable, fully paid-up, royalty-free license for the term of this Agreement to use, in the case of the Partner, "Marketo," and associated logos and, in the case of Marketo, Partner's name, Partner Product name(s) and associated logos (collectively "**Marks**") solely to enable each party to exercise its rights and perform its obligations under this Agreement. For avoidance of doubt, Marketo's Marks do not include its certification marks or trademarks other than "Marketo" and the associated logo. Any use of Marks shall be in accordance with the granting party's reasonable trademark usage policies, with proper markings and legends. As to Marketo, its trademark usage policy may be found at: <http://legal.marketo.com/legal-notices/Trademark-and-Guidelines.pdf>. Marketo may use Partner's Marks in connection with its Page and in any medium to publicize and promote the Ecosystem or Marketo products and services. Partner may use Marketo Marks solely to indicate that Partner are a participant in the Ecosystem. All uses of the Marks and related goodwill will inure solely to the respective owner of each of the Marks ("Marketo" and the associated logos in the case of Marketo, and Partner marks and associated logos in the case of Partner), and the other party will obtain no rights or goodwill with respect to the other party's mark and associated logos.
- e. Restrictions. Partner agrees not to delete or alter any copyright (e.g., "© Marketo, Inc.") or other proprietary notice signifying Marketo's ownership of the Marketo Technologies. Additionally, Partner agrees to and acknowledges the following restrictions on the licenses granted in Section 2.a-2.c: (i) in no event will Partner make available the Marketo Technology in source code form to an end user or any third party; (ii) none of the following rights are granted with respect to the Marketo Technology: the right to distribute, publicly display, and except as licensed herein the right to create derivatives

(e.g., a superset or subset of the Marketo Technology outside of an integration with the Partner Product); (iii) the Marketo Technology shall not be used to access a product or service other than the Marketo Platform; (iv) the Partner has not and will not engage in forking or otherwise attempt to modify (except as licensed herein) or reverse engineer the Marketo Technology; (v) except as licensed herein Partner has not and will not distribute a set of Marketo Technology or a development kit that is based upon or otherwise a modification of, the Marketo Technology including being a subset or superset of the Marketo Technology; and (vi) Partner is unlicensed under this Agreement to sell a Connector separate and apart from the Partner Product. Marketo may limit access to the Marketo Technology so as to prevent: damage to, the disablement of, the overburdening of, the impairment to, or other forms of interference with, the Marketo Platform.

- f. Post-Termination License. If Partner desires to retain the licenses granted under this section after the termination of this Agreement, the parties may negotiate a separate agreement to do so, but Marketo is under no obligation to enter into such an agreement.

### 3. Accelerate Program Benefits

- a. Sales and Marketing Benefits. Marketo will engage in activities intended to facilitate the sale of Partner Products ("**Sales Enablement Activities**") and activities intended to promote, market, or advertise Partner Products ("**Marketing Enablement Activities**"), as further described in Exhibit 1 (Sales & Marketing Enablement Activities).
- b. Ecosystem Page Listing. Under this Agreement, Partner shall be entitled to promote a Partner Product in the Ecosystem via a Page.
- c. Premium Sandbox. Marketo grants Partner a non-sublicensable, non-transferable, non-exclusive, revocable right to permit individuals authorized by Partner, and on Partner behalf, and who are Partner employees, contractors or agents (collectively "**Users**") to access and use a premium non-production instance of the Marketo Platform (collectively a "**Sandbox**") solely for the purposes of training such Users in the deployment and use of the Marketo Platform and the aforementioned functionality ("**Training**"). Partner shall be responsible for all acts and omissions of Partner Users. Partner shall reimburse Marketo for any damage to or loss of the Sandbox caused by Partner or Partner Users. Marketo will provide certain access information ("**Logins**") to enable Partner and Partner Users to access the Sandbox. Logins provided by Marketo may not be shared or used by anyone other than the Users. Partner shall promptly notify Marketo with reasonable security details when the security of any Login is compromised. Logins shall be and are Marketo

Confidential Information under the terms of this Agreement and shall be used for the sole purpose of accessing the Sandbox for training purposes as set forth herein. The following additional restrictions shall apply to the license granted hereunder:

(1) Restrictions on the Premium Sandbox. Partner may not modify, create derivative works, decompile, disassemble, decrypt, extract, or otherwise reverse engineer the Sandbox, except to the extent any of the preceding limitations are unenforceable under applicable law. Partner is not authorized to: (i) disclose, distribute, or transfer the Sandbox; (ii) make public any benchmarking or results of evaluating the Marketo Platform except with Marketo's prior written consent; or (iii) remove any proprietary markings or notices included as part of the Marketo Platform. If Partner does not access the Sandbox for three (3) consecutive months, Marketo may suspend Partner ability to access it. Partner shall limit access to the Sandbox to the Users and take adequate steps to protect the Sandbox from unauthorized disclosure or use including, without limitation, using any Logins provided by Marketo solely for the purpose of accessing the Sandbox for training purposes.

(2) Suspension of Sandbox. Partner can use the Sandbox subject to the following restriction: Marketo may postpone, curtail, suspend, or even terminate Partner access to the Sandbox at any time without notice, provided however that Marketo shall notify Partner of the reason promptly thereafter. Upon the termination or expiration of this Agreement for any reason, Partner shall immediately terminate Partner use of the Sandbox.

#### 4. Partner Obligations

- a. Marketo Connector Certification Program. If Partner is not certified under the Marketo LaunchPoint Connector Certification Program ("**Certification Program**"), Partner agrees to join the Certification Program under its standard terms ("**Certification Program Terms**") and complete the certification process described in those terms. Partner will maintain its certification under the Certification Program during the Term, which may include Partner obtaining re-certification when necessary under the Certification Program Terms.
- b. Eligibility for Connector Certification. Upon termination of this Agreement, Partner's participation in, and connector certification under, the Certification Program will

terminate and Partner will cease to use the Marketo certification marks licensed to Partner under the Certification Program Terms. Marketo will not be required to refund any certification fees paid by Partner in the event of such a termination.

- c. Monthly Reviews. Partner agrees to attend, and make an account manager or similar Partner representative available to attend, monthly review meetings with a Marketo representative. In such monthly review meetings, the parties will discuss, without limitation: (i) Qualifying Sales (defined in Exhibit 2) that have been made; (ii) Partner's pipeline of sales prospects and opportunities relating to Partner Products; and (iii) planning for any Sales Enablement Activities and Marketing Enablement Activities that require the parties to collaborate. As part of these monthly review meetings, Partner shall provide a version of the Partner Reporting Document (defined in Exhibit 3) to the Marketo representative documenting sales made to Marketo customers during the Term.
- d. Audit Rights. Upon sixty (60) days' advance written notice, Marketo may retain an independent certified public accountant who will have reasonable access to Partner's records related to this Agreement for an audit period not to exceed thirty (30) consecutive days to confirm that the Accelerate Program Fees paid hereunder during an agreed-upon commercially reasonable period immediately preceding the commencement of the audit (the "**Audit Window**") are accurate. Any audit hereunder shall be conducted: (i) at the Marketo's sole expense; (ii) only during the normal business hours of Partner; (iii) not more than once per year; and (iv) not within twelve (12) months of any previous audit hereunder. Notwithstanding the foregoing, in the event that the results of the audit reveal an underpayment of more than ten percent (10%) of Accelerate Program Fees during the Audit Window, then Partner shall reimburse Marketo for the reasonable costs and expenses associated with the audit.

## **5. Fees**

- a. Accelerate Program Fees. Partner will pay Marketo the Accelerate Program Fees in accordance with Exhibit 2 (Accelerate Program Fees).
- b. Taxes. All payments, prices and fees payable under this Agreement shall be made exclusive of sales taxes, use taxes and value added taxes (VAT/GST). If applicable, Partner will provide valid exemption documentation for each taxing jurisdiction to Marketo. For avoidance of any doubt, Marketo shall be responsible for paying any and all taxes imposed on or measured by Marketo's income, property and employment taxes. As applicable, Marketo shall provide Partner with a completed applicable withholding tax

certificate such as U.S. Form W-9, Form W-8 series or foreign jurisdiction equivalent of such withholding tax certificates. Marketo and Partner shall comply with all applicable tax laws and regulations.

## **6. Term and Termination**

- a. Term. This Agreement starts on the Effective Date and continues for one (1) year (the “**Initial Term**”), and will automatically renew for additional successive one (1) year terms (collectively, the “**Term**”) unless either party gives the other party written notice of non-renewal at least three (3) months before the end of the then-current term.
- b. Termination for Convenience. Marketo may terminate this Agreement for any reason upon thirty (30) days’ prior written notice to Partner.
- c. Termination for Cause. Either party may terminate this Agreement if the other party fails to cure any material breach of this Agreement within thirty (30) days of the date on which the breaching party received written notice thereof. If a party commits or suffers (whether voluntarily or involuntarily) an act of bankruptcy, receivership, liquidation, or similar event, the other party may immediately terminate this Agreement upon written notice.
- d. Consequences of Termination. Upon termination of this Agreement: (i) Partner will remain liable to pay any fees payable to Marketo that were accrued under this Agreement prior to or on the effective date of termination; and (ii) Partner will cease using the Marketo Technologies and Marketo Marks.
- e. Survival. The following sections of this Agreement will survive termination of this Agreement: Sections 1 (Definitions), 4.d (Audit Rights), 5 (Fees), 6 (Term and Termination), 7 (Intellectual Property), 9 (Confidentiality) to 14 (Miscellaneous), Exhibit 2 (Accelerate Program Fees), and Exhibit 3 (Partner Reporting Document).
- f. Suspension. If Marketo determines in its reasonable discretion that a Partner Product has caused, or threatens to cause, any disruption to the Marketo Platform, Marketo may disable any interface between the Marketo Platform and the applicable Partner Product.

## **7. Intellectual Property**

- a. Ownership. As between the parties, each party retains ownership of its intellectual property rights and technology (including intellectual property rights in all upgrades and improvements thereto). No licenses or rights are granted by either party to the other party, other than as expressly provided for in this Agreement.
  - b. Feedback. If Partner provides any feedback or suggestions to Marketo concerning the functionality or performance of the Marketo Platform ("**Feedback**"), Partner hereby assigns all right, title, and interest in the Feedback to Marketo. Further, Partner agrees to execute all documents necessary to perfect Marketo's rights in such Feedback.
- 8. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUALITY, ACCURACY, AND TITLE.
- 9. Confidentiality**
- a. Confidential Information. For the purposes of this Agreement, the term "**Confidential Information**" means any information which one party (the "**Disclosing Party**") discloses to the other party (the "**Receiving Party**") pursuant to or in connection with this Agreement (whether in writing or orally) that would reasonably be considered as confidential given its nature and the circumstances of its disclosure. Subject to Section 9.b (Exceptions), Marketo's Confidential Information includes, without limitation, the terms of this Agreement, Marketo's product roadmaps, and any Marketo marketing materials related to the Accelerate Program. The Receiving Party shall maintain the Confidential Information of the Disclosing Party in confidence with at least the same degree of care it uses to safeguard its own confidential information, but in any event, no less than a reasonable degree of care. The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose other than to perform its obligations and exercise its rights under this Agreement. The Receiving Party shall not disclose the Confidential Information of the Disclosing Party to any third party except to its officers, employees, and contractors who have a need to know for the purposes of this Agreement. The Receiving Party will ensure that any third party to which it discloses Confidential Information agrees to treat such Confidential Information in accordance with this Agreement, and the Receiving Party shall be responsible for any failure to do so by such a third party.

- b. Exceptions. The parties' confidentiality obligations shall not apply to the extent that the Receiving Party can demonstrate that the Confidential Information: (i) was in the possession of the Receiving Party prior to the time of disclosure; (ii) is or becomes public knowledge through no act or omission of the Receiving Party in breach of this Agreement; (iii) is obtained by the Receiving Party from a third party under no obligation of confidentiality to the Disclosing Party; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.
- c. Required Disclosure. The Receiving Party may disclose any Confidential Information that is required to be disclosed by law, government regulation, or court order. If such disclosure is required, the Receiving Party shall give the Disclosing Party prompt notice (to the extent practicable and permitted by law) so that the Disclosing Party may seek a protective order or take other action that is reasonable in light of the circumstances. The parties agree that nFusz may disclose the existence of this Agreement and the material terms thereof in all requisite filings with the Securities and Exchange Commission ("SEC") consistent with nFusz's disclosure obligations under such SEC rules and regulations and no additional notice to Marketo is required.
- d. Termination or Expiration. The parties' rights and obligations under this Section 9 shall continue for the duration of the Term and for one (1) year thereafter. Upon the Disclosing Party's request, the Receiving Party shall promptly return all the Confidential Information of the Disclosing Party, including all copies and tangible embodiments thereof, provided that the Receiving Party may retain copies of such Confidential Information as necessary in connection with its routine backup and archiving procedures and to ensure compliance with its legal obligations and its continuing obligations under Section 6.e (Survival) of this Agreement.

**10. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUALITY, ACCURACY, AND TITLE.

**11. Indemnification.**

- a. Partner Indemnification of Marketo. Partner shall indemnify, defend and hold Marketo, its Affiliates, employees, directors, agents, and representatives (collectively, the

“**Marketo Indemnified Parties**”) harmless against any expense, loss, liability, damage or costs (including reasonable attorneys’ fees) in connection with claims, demands, suits, or proceedings (“**Claims**”) made or brought against any of the Marketo Indemnified Parties by a third party alleging that a Partner Product (including any combination of the Marketo Platform and a Partner Product) infringes a third party’s intellectual property rights; provided that Marketo or the applicable Marketo Indemnified Party: (a) gives Partner sole control of the defense and settlement of the Claim (provided that Partner may not settle any Claim unless it unconditionally releases the applicable Marketo Indemnified Party of all liability); and (b) provides to Partner, at Partner’s expense, all reasonable assistance.

- b. Marketo’s Indemnification of Partner. Marketo shall indemnify, defend and hold Partner, its Affiliates, employees, directors, agents, and representatives (collectively, the “**Partner Indemnified Parties**”) harmless against any Claims made or brought against any of the Partner Indemnified Parties by a third party alleging that the Marketo Accelerate Program Technologies or Marketo Platform Technologies infringes a third-party’s intellectual property rights; provided that Partner or the applicable Partner Indemnified Party: (a) gives Marketo sole control of the defense and settlement of the Claim (provided that Marketo may not settle any Claim unless it unconditionally releases the applicable Partner Indemnified Party of all liability); and (b) provides to Marketo, at Marketo’s expense, all reasonable assistance.

## 12. **Limitation of Liability**

- a. NO CONSEQUENTIAL DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS AND COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, TECHNOLOGY, OR RIGHTS), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT.
- b. LIABILITY CAP. EXCEPT WITH RESPECT TO: (I) THE PAYMENT OBLIGATIONS SET FORTH IN THIS AGREEMENT, INCLUDING SECTION 5 (FEES); AND (II) THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 11 (INDEMNIFICATION), EACH PARTY’S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM AROSE. WITH RESPECT TO (II), THE TOTAL MAXIMUM AGGREGATE LIABILITY OF A PARTY SHALL BE ONE MILLION DOLLARS (\$1,000,000).



**13. [Reserved] -**

**14. Miscellaneous**

- a. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be either: (i) delivered by electronic mail; (ii) delivered by hand, in which event the notice shall be deemed effective when delivered; (iii) delivered by prepaid registered or certified mail, return receipt requested, in which event the notice shall be deemed effective when received; or (iv) delivered by recognized overnight courier services, in which event the notice shall be deemed to have been received as of the regularly scheduled time for delivery established by such courier service. All notices and other communications under this Agreement shall be given to the Parties hereto at the following addresses (which may be updated from time to time upon written notice):

Marketo:

Marketo, Inc.  
901 Mariners Island Blvd, #500  
San Mateo, CA 94404  
Attn: General Counsel  
info@marketo.com

Partner:

nFusz, Inc.  
344 Hauser Blvd, Suite 414  
Los Angeles, CA 90036  
Att: Rory J. Cutaia, CEO  
rory@nfusz.com

- b. No Joint Venture. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between Marketo and Partner.

Neither party shall have the right to enter into any agreement that binds or obligates the other in any way, except as otherwise provided expressly in this Agreement.

- c. Severability. If any provision of this Agreement is determined to be invalid or unenforceable for any reason, such provision shall be deemed modified, if possible, to the extent required to render it valid, enforceable and binding, and such determination shall not affect the validity or enforceability of any other provision of this Agreement.
- d. Assignment. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment without such consent will be void. Notwithstanding the foregoing, either party may assign this Agreement, without the other party's consent, in connection with any merger, consolidation, sale of all or substantially all of such party's assets, or any other similar transaction, provided that the applicable assignee agrees to be bound by the terms of this Agreement.
- e. Binding Agreement. This Agreement shall be binding upon each party and its Affiliates, their past or present officers, directors, members, managers, shareholders, agents, employees, successors or assigns and will inure to the benefit of the other party and its successors and assigns.
- f. Execution in Counterpart. This Agreement may be executed in multiple counterparts, each such counterpart being deemed an original copy thereof.
- g. Force Majeure. Neither party will be responsible for failure or delay of performance caused by, and each party will use reasonable efforts to mitigate the effect of: (i) an act of nature, war, hostility or sabotage; (ii) an electrical, internet, or telecommunication outage that is not caused the obligated party; or (iii) other event outside of the obligated party's reasonable control.
- h. Non-Waiver. Failure by either party at any time to enforce any of the terms hereof shall not constitute a waiver of any of the provisions hereof, and no such waiver shall be construed as a waiver of any succeeding breach of such provision.
- i. Entire Agreement, Merger and Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous related communications or agreements, whether oral, written, or electronically transmitted, between the parties.

- j. Prior Agreements. This Agreement comprises the entire Agreement between the parties and supersedes all prior or contemporaneous negotiations, discussions or Exhibits, whether written or oral, between the parties regarding the Ecosystem (including prior versions the Marketo LaunchPoint Terms of Participation, Marketo LaunchPoint Elevate Program Agreement, and any archived versions of the Marketo Application Programming Interface License).
- k. Amendments. This Agreement may only be amended, supplemented, or otherwise modified, by written agreement signed by duly authorized representatives of both parties.
- l. Implied License and Estoppel. Nothing in this Agreement shall be construed as granting a license via the doctrines of implied license or legal estoppel to rights beyond what is expressly granted under this Agreement. Further, nothing in this Agreement shall be deemed a waiver of either party's intellectual property rights. Through agreeing to the terms of this Agreement, each party acknowledges that they are only licensed to the rights expressly enumerated in this Agreement and that the actions of the parties and/or the consideration granted under this Agreement is solely for these rights and for no others.
- m. Keeping the Peace. During the Term of this Agreement, each party agrees not to directly or indirectly assert, make a demand related to, or sue for infringement of, any claim of any patent that reads on (or that would otherwise be infringed by) any of the other party's intellectual property or to permit any of their Affiliates to do any of the foregoing, against a party or its Affiliates.
- n. Statements About the Ecosystem. Partner shall not make any false, misleading, unfavorable, or disparaging statements regarding the Ecosystem, the Marketo Platform Technologies, Marketo Platform, its program(s), or the capabilities, features, functions or performance of the foregoing, including without limitation in or in the course of any sales, marketing, customer or partner engagements, publicity, and other activities under this Agreement. Neither party shall make any disparaging statements about the other.
- o. Anti-Bribery Provisions. Marketo represents, warrants, and covenants that its Affiliates, and its and their owners, partners, officers, directors, employees, agents, representatives, and subcontractors (collectively, "**Representatives**") shall comply with all applicable laws related to bribery, fraud, corruption, or international trade, including, but not limited to, the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, and any

applicable anti-bribery or trade laws of other countries ("**Anti-Corruption Laws**"). Marketo and its Representatives have not committed and will not commit, and have no information, reason to believe, or knowledge of anyone else having committed or intending to commit, any violation of the Anti-Corruption Laws or any act or omission which could cause Partner to be in violation of the Anti-Corruption Laws with respect to any activities related to the Agreement or the business of Partner.

- p. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California, as applicable to agreements executed and wholly performed therein, but without regard to the choice of law provisions thereof. The exclusive jurisdiction and venue for any action initiated under or in relation to this Agreement shall be either the Superior Court for the County of San Mateo, California, or the United States Federal District Court for the Northern District of California. In the event of any controversy, claim or action between the parties, arising from or related to this Agreement, the prevailing party will be entitled to receive from the other party its reasonable attorneys' fees and costs. The United Nations Conventions on Contracts for the International Sale of Goods shall not apply to this Agreement.
- q. Headings. The subject headings of the sections of this Agreement are included for convenience only, and shall not affect the construction or interpretation of its provisions.
- r. Precedence. In the event of a conflict between this Agreement and an exhibit to this Agreement, this Agreement will prevail to the extent of the conflict.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective authorized representatives as of the Effective Date.

For nFusz, Inc.:

For Marketo:

Signature: RORY J. CUTAIA  
RORY J. CUTAIA / Feb 9, 2018

Signature: Shai Alfandary  
Shai Alfandary / Feb 9, 2018

Name: RORY J.CUTAIA

Name: Shai Alfandary

Title: CEO

Title: VP LaunchPoint

Date: 2.9.2018

Date: 2/9/2018

## **EXHIBIT 1**

### **SALES & MARKETING ENABLEMENT ACTIVITIES**

#### **1. Sales Enablement Activities**

Marketo may engage in Sales Enablement Activities that include:

- a. Demo Days. Partner may participate in demo days, where Partner is given opportunity to showcase technology to the Marketo sales team.
- b. Case Study. Partner to prepare a slide presentation and Marketo shall promote this slide presentation internally with Partner assistance discussing the integration between Partner Products and the Marketo Platform, and such integration's benefits
- c. Sales Boot Camp. Marketo may invite Partner to attend the Marketo Sales Boot Camp, a training and education program that educates the Marketo sales team on the features and function of the Partner Product.
- d. Commission Plan. Using Spiffs or other incentives, Marketo may implement a compensation plan for its sales and/or customer success teams to facilitate the promotion of Partner Products by such sales and/or customer success teams to Marketo customers.

#### **2. Marketing Enablement Activities**

Marketo may engage in Marketing Enablement Activities that include:

- a. Joint Customer Webinar. Marketo may schedule, promote, and host a webinar with a joint customer about a Partner Product, with an opportunity for Partner to participate in such webinar.
- b. Collateral Creation. Upon Partner's request, Marketo will provide guidelines and style templates to Partner to be used to create marketing collateral based upon Partner content.
- c. Press Release. The parties may collaborate to jointly create and agree to the content of press releases and blog posts promoting this Agreement.
- d. Event Marketing. The parties may jointly create, promote, and host a networking event with prospective and existing customers.

- e. Marketing Nation Summit Sponsorship. Marketo may offer Partner an opportunity to be a sponsor at a Marketo Nation Summit event.
- f. LaunchPoint Website Marketing. Marketo may list Partner Products and include Partner as a featured partner in a section of the main Marketo LaunchPoint website at <http://launchpoint.marketo.com>.

\* \* \* \* \*

## EXHIBIT 2

### ACCELERATE PROGRAM FEES

#### 1. Definitions

In this Agreement:

**"Accounting"** means a written record of the Fees paid by the Partner hereunder in an agreed to form and format.

**"Annualized Sale Revenue"** means Sale Revenue, adjusted to annualize such amount. For example, if a Qualifying Sale is of a subscription with a one (1) year term, the Annualized Sale Revenue equals the Sale Revenue for that Qualifying Sale. If a Qualifying Sale is of a subscription with a two (2) year term, the Annualized Sale Revenue is half of the Sale Revenue for that Qualifying Sale.

**"Beta Partner Products"** means a Partner Product provided to a Partner customer or prospective customer on a royalty free or fee free basis.

**"Buy Out Revenue Share"** means, in relation to a Qualifying Sale, the Annualized Sale Revenue for the Qualifying Sales multiplied by the Revenue Share Percentage.

**"Excluded Items"** means, in relation to the sale of a Partner Product, any applicable sales taxes, and any delivery, packaging, or handling charges.

**"Minimum Commitment"** means a minimum per Quarter amount payable to Marketo in the amount of US\$25000.

**"Qualifying Sale"** means the sale of a Partner Product by Partner (whether directly or through a Partner reseller) to a third-party end customer who is also a customer of Marketo at the time of the sale, and any renewals as provided for pursuant to Section 4 (Treatment of Renewals) of this Exhibit. For the avoidance of doubt, a sale occurs when it is booked by Partner. Subject to Section 5, excluded from this definition are Beta Partner Products.

**"Quarter"** means a recurring three (3) month period after the Effective Date. For example, the period of October 1-December 31st, January 1-March 30th, and so on.

**"Revenue Share"** means for a given Quarter the greater of: (i) the sum of all Sale Revenue for every Qualifying Sale multiplied by the Revenue Share Percentage; or (ii) the Sale Revenue Floor Price for each Qualifying Sale.



**“Revenue Share Percentage”** means 20%.

**“Sale Revenue”** means, in relation to a Qualifying Sale, the total sales price of the relevant Partner Product, excluding any Excluded Items, but without reduction for any withholding tax paid by Partner or Partner’s customer. Sale Revenue arises on the date the Qualifying Sale is booked.

**“Sale Revenue Floor Price”** means US\$5000

## **2. Fees**

Partner will pay Marketo the Revenue Share, and, subject to Section 3, the Minimum Commitment (collectively, the **“Accelerate Program Fees”**).

## **3. Payment of Fees**

Accelerate Program Fees accrued during each Quarter (upon booking of Qualifying Sales) will be calculated by Partner promptly after the end of the applicable Quarter and paid by Partner to Marketo in U.S. dollars within thirty (30) days after the end of such Quarter. Partner will also provide Marketo each Quarter with an Accounting of Accelerate Program Fees and how they were calculated. Within thirty (30) days of the end of each Quarter during the Term, Marketo will calculate the aggregate Accelerate Program Fees paid by Partner for such Quarter. If the aggregate Accelerate Program Fees paid during such Quarter do not equal or exceed the Minimum Commitment, Partner will pay to Marketo an amount equal to the difference between such aggregate Accelerate Program Fees paid for such Quarter and the Minimum Commitment within thirty (30) days after the end of such Quarter. Paid Accelerate Program Fees are non-refundable.

## **4. Treatment of Renewals**

If a Qualifying Sale is made under an agreement that subsequently is renewed, and that agreement was initially entered into on or after the Effective Date, each renewal will be treated as a separate Qualifying Sale, and any Sale Revenue associated with that renewal will also be subject to the payment of Accelerate Program Fees by Partner. For clarity, if such agreement was initially entered into prior to the Effective Date, renewals of such agreement will not constitute Qualifying Sales.

## **5. Beta Partner Products**

Partner may provide Beta Partner Products to prospective customers at no charge to Partner or the prospective customer. Unless approved by Marketo in writing, Partner must deactivate Beta Partner Products after sixty (60) days, and cannot extend Beta Partner Products beyond sixty (60) days, and can provision only one Beta Partner Product for each prospective customer. Beta Partner Products

utilized beyond this sixty (60) day period will be considered a Qualifying Sale within the meaning of this Agreement.

**6. Buy Out Upon Termination**

Upon termination of this Agreement, Partner will pay Marketo a Buy Out Fee within thirty (30) days of termination. **“Buy Out Fee”** means the aggregate Buy Out Revenue Share associated with all Qualifying Sales which are active (i.e. Qualifying Sales of Partner Product subscriptions that have not terminated or expired) on the effective date of termination that have actually been received by Partner as of the date of termination. The balance of the Buy Out Revenue Share, calculated as of the date of termination, shall be paid to Marketo as and when received by Partner.

\* \* \* \* \*

**EXHIBIT 3**

**PARTNER REPORTING DOCUMENT**

Customer Name	Sale Revenue	Subscription Start Date	Subscription End Date	Partner Product Description
-		-		-
-		-		-

**INSTRUCTIONS:**

1. One row must be filled out for every Marketo customer where you have active subscriptions during the Term.
2. Column A: customer name (i.e., name of individual or corporate entity name, as applicable).
3. Column B: "Sales Revenue" has the meanings provided in Exhibit 2.
4. Column C: the date upon which the Partner Product is sold or made available to the customer.
5. Column D: the date upon which the Partner Product ceases to be made available to the customer based upon the term of the subscription agreement for the Partner Product.
6. Column E: Description of Partner Product sold to customer.

## **Exhibit 4**

### **MARKETO LAUNCHPOINT PAGE EXHIBIT**

This Marketo LaunchPoint Page Exhibit ("**Exhibit**") governs the Page listing of Your company, and associated service or solution in the Marketo Ecosystem, and the benefits associated with this listing ("**Ecosystem Benefits**"). This Exhibit is effective between the Partner (referenced in this Exhibit as "**You**", "**Your**", or "**Yours**") and Marketo (and its Affiliates) (collectively "**We**", "**Us**", or "**Our**") as of the Effective Date.

#### **1. Ecosystem Benefits**

##### **1.1 Ecosystem Participation Generally**

**1.1.1 Open to both Services Partners.** Be You a provider of services, solutions, or both this Exhibit has benefits that You can use including- the ability to post a Page, and use certain Marks just to name a few.

**1.1.2 Market yourself to the Ecosystem and the world.** You will be able to list Your name, solution(s), copy, screen shots, video and other content on, through and within a Page, and You agree to maintain Your Page pursuant to the terms and conditions of this Exhibit. However, We may, in Our sole discretion and for any reason at any time, edit, move, monitor, or collect data from Your Page, and suspend, or remove Your Page from the Ecosystem.

**1.1.3 Feedback regarding your products.** Once Your Page is posted, You will receive customer feedback regarding Your Page and the products listed on this Page. Note, absent a violation of the LaunchPoint terms of use, or the Marketo Use Policy We have no control over the content of these customer posts.

**1.1.4 Let people know what you think.** Another benefit is that We will allow You to post reviews and ratings of other pages. All reviews or ratings shall be made in good faith and may not be made anonymously. You acknowledge that We do not endorse any pages and have no responsibility for availability or accuracy related to the pages.

#### **2. Additional Terms**

**2.1. It's Your page.** You represent and warrant that You are solely responsible, and that We have no responsibility or liability of any kind, for the Page, or its development or maintenance. You represent and warrant that You will be solely responsible for: (a) the operation of Your solutions featured in Your Page; (b) creating and displaying Your Page; (c) the accuracy and appropriateness of Your Page; and (d) ensuring that Your Page does not violate or infringe the rights of any third party

(including, for example, patent, copyrights, trademarks, privacy, or other personal or proprietary rights).

2.2 You wrote it, right? You represent and warrant that: (a) Your Page and the use of Your Page by Us and any users of the Ecosystem does not and will not violate, misappropriate or infringe the rights of any person or entity including any contract rights or any proprietary or intellectual property right of any person or entity; (b) You will comply with all applicable local, state, national and international laws and regulations, including, without limitation, all applicable export control laws, and maintain all licenses, permits and other permissions necessary to Your Page; (c) Your Page will not be obscene, defamatory, fraudulent or otherwise illegal in any jurisdiction; and (d) Your Page will not contain any virus, worm, Trojan horse, adware, spyware or other malicious code.

2.3 Additional Products. Subject to each party's respective rights and obligations under this Exhibit, each party acknowledges that any person or entity who lists pages on the Ecosystem may develop and market products that are similar to or otherwise compete with Your or Our respective products and services.

2.4 No warranties generally. We disclaim all warranties relating to the Ecosystem, including but not limited to any implied warranties of merchantability or fitness for a particular purpose. We make no warranty or representation: (a) regarding any Ecosystem Benefits or services that We provide to You as an Ecosystem partner; (b) that Ecosystem participation will increase Your sales; (c) regarding any pages on the Ecosystem, even if We reviewed, posted, certified, or rated those pages; or (d) that Your Page or the Ecosystem will operate on an error free or uninterrupted basis.

2.5 Page Data. We shall have the ability to monitor and record the number of times: (a) Your Page has been viewed; or (b) a widget or trigger is executed on Your Page. Further, We may aggregate data related to clauses (a) or (b) to generate statistical information related to Your Page for the purpose of, for example, comparing page view traffic across the Ecosystem. We own all right and title to this aggregate data.



**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Rory J. Cutaia, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q nFüz, 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. I am 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 my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me 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 my 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 my 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. I have disclosed, based on my 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.

August 14, 2018

*/s/ Rory Cutaia*

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Rory Cutaia  
President, Secretary, Chief Executive Officer, Director, and Principal Executive Officer

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**CERTIFICATION PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jeff Clayborne, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of nFűsz, 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. I am 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 my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me 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 my 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 my 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. I have disclosed, based on my 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.

August 14, 2018

/s/ Jeff Clayborne

Jeff Clayborne  
Chief Financial Officer, Principal Financial Officer, and Principal Accounting Officer

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**CERTIFICATION PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

**The undersigned, Rory J. Cutaia, hereby certifies, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that**

1. the Quarterly Report on Form 10-Q of nFüsz, Inc. for the quarterly period ended June 30, 2018 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 Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of nFüsz Inc.

August 14, 2018

*/s/ Rory Cutaia*

Rory J. Cutaia

President, Secretary, Chief

Executive Officer, Director, and Principal Executive Officer

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**CERTIFICATION PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

**The undersigned, Jeff Clayborne, hereby certifies, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that**

1. the Quarterly Report on Form 10-Q of nFüsz, Inc. for the quarterly period ended June 30, 2018 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 Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of nFüsz, Inc.

August 14, 2018

*/s/ Jeff Clayborne*

Jeff Clayborne

Chief Financial Officer, Principal Financial Officer, and Principal Accounting Officer

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