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

FORM 8-K

Current Report

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 23, 2016

FORM HOLDINGS CORP.
(Exact Name of Registrant as Specified in its Charter)

Delaware	001-34785	20-4988129
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

780 Third Avenue, 12th Floor
New York, New York 10017
(Address of Principal Executive Offices and Zip Code)

Registrant's telephone number, including area code: (646) 525-4319

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Forward-Looking Statements

Statements contained in this Current Report on Form 8-K relating to FORM Holdings Corp.'s or management's intentions, hopes, beliefs, expectations or predictions of the future, including statements relating to the combined company's management and board of directors and any other statements about FORM Holdings Corp.'s management team's future expectations, beliefs, goals, plans or prospects are forward-looking statements. FORM Holdings Corp.'s actual results could differ materially from those projected in these forward-looking statements. Additional factors that could cause actual results to differ materially from those described in the forward-looking statements are set forth in the 424(b)(3) proxy statement/prospectus of FORM Holdings Corp. (File No. 333-213566), filed with the U.S. Securities and Exchange Commission (the "SEC") on October 28, 2016, and in subsequent reports on Forms 10-Q and 8-K and other filings made with the SEC by FORM Holdings Corp. FORM Holdings Corp. disclaims any intention or obligation to revise any forward-looking statements, including financial estimates, whether as a result of new information, future events or otherwise.

Item 1.01 Entry into a Material Definitive Agreement

The disclosure in Item 2.01 of this Current Report on Form 8-K (the "Current Report") is incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets

Completion of Merger with XpresSpa Holdings, LLC

On December 23, 2016 (the "Closing Date"), FHXMS, LLC ("Merger Sub"), a Delaware limited liability company and wholly-owned subsidiary of FORM Holdings Corp., a Delaware corporation ("FORM"), merged with and into XpresSpa Holdings LLC, a Delaware limited liability company ("XpresSpa"), with XpresSpa being the surviving entity and a wholly-owned subsidiary of FORM, pursuant to the terms and conditions of the previously announced Agreement and Plan of Merger, dated as of August 8, 2016, as subsequently amended on September 8, 2016 and October 25, 2016 (collectively, the "Merger Agreement"), by and among FORM, Merger Sub, XpresSpa, the unitholders of XpresSpa who are parties thereto or who become parties thereto (the "Unitholders") and Mistral XH Representative, LLC, as representative of the Unitholders (the "Representative") (the "Merger").

On the Closing Date, (i) the then-outstanding common units of XpresSpa (other than those held by FORM and its subsidiaries, which were cancelled without any consideration) and (ii) the then-outstanding preferred units of XpresSpa (other than those held by FORM and its subsidiaries, which were cancelled without any consideration) were cancelled and automatically converted into the right to receive an aggregate of:

(a) 2,500,000 shares of FORM common stock, par value $0.01 per share ("FORM Common Stock"),

(b) 494,792 shares of newly designated Series D Convertible Preferred Stock, par value $0.01 per share, of FORM (the "FORM Preferred Stock") with an aggregate initial liquidation preference of $23,750,000, accruing dividends at 9% per annum and which are initially convertible into 3,958,336 shares of FORM Common Stock, and

(c) five-year warrants to purchase an aggregate of 2,500,000 shares of FORM Common Stock, at an exercise price of $3.00 per share, in each case, subject to adjustment in the event of a stock split, dividend or similar events.

As a result of the consummation of the Merger, as of the Closing Date, the former stockholders of XpresSpa own approximately 18% of the outstanding shares of FORM Common Stock (or 33% of the outstanding shares of FORM Common Stock calculated on a fully diluted basis) and the stockholders of FORM prior to the Merger own approximately 82% of the outstanding shares of FORM Common Stock (or 67% of the outstanding shares of FORM Common Stock calculated on a fully diluted basis).

The FORM Common Stock and FORM Preferred Stock issued in connection with the Merger were registered under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to a registration statement on Form S-4 (File No. 333-213566), originally filed with the SEC on September 9, 2016, as amended, and declared effective on October 27, 2016 (the "Form S-4"). The prospectus included in the Form S-4 contains additional information about the Merger and the related transactions. The Form S-4 also included the proxy statement (the "Proxy Statement") for FORM's 2016 Annual Meeting of Stockholders, held on November 28, 2016 (the "Annual Meeting").

The foregoing description of the Merger Agreement is not complete and is subject to, and qualified in its entirety by, the full text of the Merger Agreement, which was attached as Annex A to the Proxy Statement, the terms of which are incorporated herein by reference.

Rockmore Senior Secured Note

XpresSpa is obligated under a senior secured note payable to Rockmore Investment Master Fund Ltd. ("Rockmore"), a significant equity holder of XpresSpa, with an outstanding balance of approximately $6,500,000 (the "Senior Secured Note"). The Senior Secured Note accrues interest of 9.24% per annum, payable monthly, plus an additional 2.0% per annum, and matures on May 1, 2018, with an additional one-year extension if both FORM and Rockmore consent to such extension. Upon completion of the Merger, the Senior Secured Note remained outstanding as an obligation of XpresSpa, but became guaranteed by FORM. Rockmore is an investment entity controlled by FORM's board member, Bruce T. Bernstein. Rockmore owned equity securities of XpresSpa that received approximately 9.5% of the merger consideration and, following completion of the Merger, Rockmore remained the holder of the Senior Secured Note, and holds approximately 4.7% of the outstanding common stock of FORM on a fully diluted basis. Rockmore provided its consent to the Merger.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The disclosure in Item 2.01 of this Current Report is incorporated herein by reference.

Item 3.03 Material Modification to Rights of Security Holders

On December 23, 2016, FORM filed with the Secretary of State of the State of Delaware a Certificate of Designation of Preferences, Rights and Limitations of Series D Convertible Preferred Stock (the "Certificate of Designations"). Pursuant to the Certificate of Designations, the holders of FORM Preferred Stock are entitled, among other things, to an aggregate initial liquidation preference of $23,750,000 and the right to participate in any dividends and distributions paid to common stockholders on an as-converted basis. The FORM Preferred Stock will vote on an as-converted basis. The FORM Preferred Stock shall be initially convertible into an aggregate of 3,958,336 shares of FORM Common Stock, which equals a $6.00 per share conversion price, and each holder of FORM Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of FORM Common Stock into which such shares of FORM Preferred Stock are convertible. Upon the occurrence of certain fundamental events, the holders of the FORM Preferred Stock will be able to require FORM to redeem the shares of FORM Preferred Stock at the greater of the liquidation preference and the amount per share as would have been payable had the shares of FORM Preferred Stock been converted into FORM Common Stock. The holders of record of FORM Preferred Stock shall be entitled to elect one director of FORM, voting exclusively as a separate class, so long as the holders of FORM Preferred Stock represent beneficial ownership in the aggregate of equal to or more than 5% of FORM's issued and outstanding Common Stock on an as-converted basis.

Pursuant to the terms of the Certificate of Designations, on the seven year anniversary of the initial issuance date of the shares of FORM Preferred Stock, FORM may repay each share of FORM Preferred Stock, at its option, in cash, by delivery of FORM Common Stock or through any combination thereof. If FORM elects to make a payment, or any portion thereof, in shares of FORM Common Stock, the number of shares deliverable (the "Base Shares") will be based on the volume weighted average price per share of FORM Common Stock for the thirty trading days prior to the date of calculation (the "Base Price") plus an additional number of shares of FORM Common Stock (the "Premium Shares"), calculated as follows: (i) if the Base Price is greater than $9.00, no Premium Shares shall be issued, (ii) if the Base Price is greater than $7.00 and equal to or less than $9.00, an additional number of shares equal to 5% of the Base Shares shall be issued, (iii) if the Base Price is greater than $6.00 and equal to or less than $7.00, an additional number of shares equal to 10% of the Base Shares shall be issued, (iv) if the Base Price is greater than $5.00 and equal to or less than $6.00, an additional number of shares equal to 20% of the Base Shares shall be issued and (v) if the Base Price is less than or equal to $5.00, an additional number of shares equal to 25% of the Base Shares shall be issued. Accordingly, if the volume weighted average price per share of FORM Common Stock is below $9.00 per share at the time of repayment and FORM exercises the option to make such repayment in shares of FORM Common Stock, a large number of shares of FORM Common Stock may be issued to the holders of FORM Preferred Stock upon maturity, which may have a negative effect on the trading price FORM Common Stock. At the seven year maturity date of FORM Preferred Stock (which is the date that is seven years from the closing date of the Merger), FORM, at its election, may decide to issue shares of FORM Common Stock based on the formula set forth above or to re-pay in cash all or any portion of the FORM Preferred Stock.

In 2023, upon the maturity date of the FORM Preferred Stock, when determining whether to repay the FORM Preferred Stock in cash or shares of FORM Common Stock, FORM expects to consider a number of factors, including its cash position, the price of FORM Common Stock and FORM's capital structure at such time. Because FORM does not have to make a determination as to which option to elect until 2023, it is impossible to predict whether it is more or less likely to repay in cash, stock or a portion of each. For example, assuming the entire amount of FORM Preferred Stock was outstanding at the seven year maturity date, and FORM opted to repay such FORM Preferred Stock entirely in shares of FORM Common Stock, the number of shares of FORM Common Stock to be issued at such repayment if the Base Price was $9.00 per share, $6.50 per share and $2.50 (above the closing price on December 22, 2016) would be approximately 2,770,833 shares, 4,019,231 shares and 11,875,000, respectively.

The foregoing description of the Certificate of Designations is not complete and is subject to, and qualified in its entirety by, the full text of the Certificate of Designations, which is attached to this Current Report as Exhibit 3.1 and is incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(c) On December 23, 2016, the board of directors of FORM (the "Board") elected Edward Jankowski as Senior Vice President and Chief Executive Officer of XpresSpa, to hold office in accordance with the by-laws of FORM.

Mr. Jankowski, age 63, has served as XpresSpa's Chief Executive Officer since June 2016 and as a member of its Board of Directors since May 2015. From 2012 to 2016, Mr. Jankowski was the Vice President and General Manager of Luxury Retail at Luxottica, where he oversaw the Ilori and Optical Shop of Aspen and Persol retail stores, as well as the development of a go-forward Luxury Retail model for future expansion. From 2007 to 2012, Mr. Jankowski was Senior Vice President and General Manager for Godiva Chocolatier, responsible for the $400 million North America multi-channel business, consisting of 240 retail stores, 2,000 plus wholesale doors and direct and interactive business. From 2001 to 2007, Mr. Jankowski was the Chief Operating Officer of Safilo Group's Solstice sunglasses stores, where he opened 120 stores, oversaw store operations, merchandising, finance, planning/distribution, marketing and communications, loss prevention, real estate, visual and store design/development/construction. From 1999 to 2001, Mr. Jankowski was the President of Airport Shops Division of World Duty Free Americas, a division of B.A.A. While there, he was a member of the Senior Executive Committee, with responsibility for the $120 million Airport Division. He managed 85 retail stores throughout the United States, Bermuda and Puerto Rico in the Duty Free Fragrance, Cosmetics, Luxury Specialty and News and Gift retail business. From 1993 to 1999, Mr. Jankowski served as the Vice President/Director of Stores for Liz Claiborne. During this time, he was a member of the Retail Executive Committee and led execution of business strategies, sales results and store profit. Prior to his position at Liz Claiborne, Mr. Jankowski held other significant leadership positions, such as, District Manager at Casual Corner from 1978 to 1980, District Manager at Atherton Industries from 1980 to 1985, District Manager, Reginal Manager and eventually Vice President/Director of Stores at Woman's World from 1985 to 1990 and as Reginal Vice President at Ganto's from 1990 to 1993. Mr. Jankowski began his career in 1975 as an Executive Trainee for R.H. Macy's. Mr. Jankowski currently serves on the Board of Directors of the Accessories Council, FIT Accessories Advisory and the Elizabeth Carter Beach Association. Mr. Jankowski was formerly a member of the LIM Advisory Board. Mr. Jankowski received his B.Sc. in management and commerce marketing from Rider University.

FORM is currently negotiating the terms of an employment agreement with Mr. Jankowski, which will be disclosed in a subsequent Current Report on Form 8-K once finalized.

(d) On December 23, 2016, following the closing of the Merger, Andrew R. Heyer was elected to the Board, to serve on the Board until FORM's 2017 annual meeting of stockholders or until his successor has been elected and qualified, or until his earlier resignation or removal. Mr. Heyer will serve as the designee of the FORM Preferred Stock pursuant to the Certificate of Designations, which states that the holders of record of FORM Preferred Stock shall be entitled to elect one director of FORM, voting exclusively as a separate class, so long as the holders of FORM Preferred Stock represent beneficial ownership in the aggregate of equal to or more than 5% of FORM's issued and outstanding Common Stock on an as-converted basis. The Company is not aware of any transaction in which Mr. Heyer has an interest requiring disclosure under Item 404(a) of Regulation S-K.

In connection with Mr. Heyer's appointment, Mr. Heyer and FORM entered into an Independent Director's Agreement, dated as of December 23, 2016, a copy of which is attached to this Current Report as Exhibit 10.1 and is incorporated herein by reference.

Item 8.01 Other Events

On December 23, 2016, FORM issued a press release announcing the completion of the previously announced Merger, pursuant to the Merger Agreement. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(a) Financial statements of business acquired.

The financial statements required by this item will be filed by FORM by amendment to this Current Report not later than 71 days after the date on which this Current Report was required to be filed.

(b) Pro forma financial information.

The financial statements required by this item will be filed by FORM by amendment to this Current Report not later than 71 days after the date on which this Current Report was required to be filed.

(d) Exhibits.

Exhibit Number	Description
2.1	Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings LLC, the unitholders of XpresSpa who are parties thereto or who become parties thereto and Mistral XH Representative, LLC, as representative of the XpresSpa unitholders, dated as of August 8, 2016, as amended on September 8, 2016 and October 25, 2016 (previously filed as Annex A to FORM's Registration Statement on Form S-4 filed with the SEC on October 26, 2016).
3.1	Certificate of Designation of Preferences, Rights and Limitations of Series D Convertible Preferred Stock.
4.1	Form of warrant to purchase shares of common stock of FORM Holdings Corp. (previously filed as Annex F to FORM's Registration Statement on Form S-4 filed with the SEC on October 26, 2016).
10.1	Independent Director's Agreement, by and between FORM Holdings Corp. and Andrew R. Heyer, dated as of December 23, 2016.
99.1	Press Release, dated December 23, 2016.

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 hereunto duly authorized.

FORM HOLDINGS CORP.

Dated: December 23, 2016

By: /s/ Andrew D. Perlman
Name: Andrew D. Perlman
Title: Chief Executive Officer

Exhibit 3.1

FORM HOLDINGS CORP.

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES D CONVERTIBLE PREFERRED STOCK**

WHEREAS, the Amended and Restated Certificate of Incorporation of Form Holdings Corp., a Delaware corporation (the "Corporation"), provides for a class of its authorized stock known as preferred stock, comprised of 5,000,000 shares, issuable from time to time in one or more series;

WHEREAS, the Board of Directors of the Corporation (the "Board of Directors") is authorized to fix the dividend rights, voting rights, conversion rights, redemption privileges and liquidation preferences of any wholly unissued series of preferred stock and the number of shares constituting any series and the designation thereof, of any of them; and

WHEREAS, it is the desire of the Board of Directors, pursuant to its authority as aforesaid, to fix the rights, preferences, restrictions and other matters relating to a series of the preferred stock, which shall consist of 500,000 shares of the preferred stock which the Corporation has the authority to issue, classified as Series D Convertible Preferred Stock, as follows:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors does hereby provide for the issuance of a series of preferred stock in exchange for other securities, rights, or property and does hereby fix and determine the rights, preferences, restrictions and other matters relating to such series of preferred stock as follows:

TERMS OF PREFERRED STOCK

1. Designation and Amount. The class of preferred stock hereby classified shall be designated the "Series D Convertible Preferred Stock". The initial number of authorized shares of the Series D Convertible Preferred Stock shall be 500,000, which, except as provided herein, shall not be subject to increase without the consent of the holders of a majority of the then outstanding shares of Series D Convertible Preferred Stock. Each share of the Series D Convertible Preferred Stock shall have a par value of $0.01.

2. Dividends.

   2.1. Dividends and Distributions to the Holders of Common Stock. From and after the first date of issuance of any shares of Series D Convertible Preferred Stock (the "Initial Issuance Date"), the holders of Series D Convertible Preferred Stock (each, a "Holder" and collectively, the "Holders") shall be entitled to receive such dividends paid and distributions made to the holders of common stock, par value $0.01 per share (the "Common Stock"), pro rata to the holders of Common Stock to the same extent as if such Holders had converted the Series D Convertible Preferred Stock into Common Stock and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of Common Stock.

2.2. Payment of Dividends. In addition to the dividends described in Section 2.1, from and after the date of the issuance of any shares of Series D Convertible Preferred Stock, dividends at the rate per annum of $4.32 per share shall accrue on such shares of Series D Convertible Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series D Convertible Preferred Stock) (the "Accruing Dividends"). Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided, however, that except as set forth in the following sentence of this Section 2.2, in Section 4, or in Section 7, such Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless the holders of the Series D Convertible Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series D Convertible Preferred Stock in an amount at least equal to (i) the amount of the aggregate Accruing Dividends then accrued on such share of Series D Convertible Preferred Stock and not previously paid and (ii) the amount required to be paid pursuant to Section 2.1.

3. Liquidation Preference.

3.1. Preferential Payments to Holders of Series D Convertible Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, subject to the rights of the holders of any other class of preferred stock, the holders of shares of Series D Convertible Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the Stated Value (defined below) plus any Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series D Convertible Preferred Stock been converted into Common Stock pursuant to Section 6 immediately prior to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the "Series D Liquidation Preference Amount"). If upon any such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the Holders the full amount to which they shall be entitled under this Section 3.1, the Holders shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

3.2. Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid to the holders of shares of Series D Convertible Preferred Stock (subject to the rights of the holders of any other class of preferred stock), the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

4. Deemed Liquidation Events.

4.1. Certain definitions. For purposes of this Certificate of Designation, the following definitions shall apply:

4.1.1. "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

4.1.2. "Deemed Liquidation Event" means that the Corporation shall, directly or indirectly, in one or more related transactions, (A) (i) consolidate or merge with or into (whether or not the Corporation is the surviving corporation) another Person or (ii) permit any subsidiary of the Corporation to merge or consolidate with or into (whether or not the subsidiary of the Corporation is the surviving corporation) another Person, if the Corporation issues shares of its capital stock pursuant to such merger or consolidation (in either (i) or (ii) of this clause (A)), other than a consolidation or merger involving the Corporation or a subsidiary of the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such consolidation or merger continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such consolidation or merger, at least a majority of the Voting Stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly-owned subsidiary of another corporation immediately following such consolidation or merger, the parent corporation of such surviving or resulting corporation), or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Corporation on a consolidated basis to another entity, or (C) allow another Person(s) to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the entity or entities making or party to, or associated or affiliated with the entity or entities making or party to, such purchase, tender or exchange offer), or (D) consummate a stock purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another entity whereby such other entity acquires more than the 50% of the outstanding shares of Voting Stock (not including any shares of Voting Stock held by the other Person(s) making or party to, or associated or affiliated with the other Person(s) making or party to, such stock purchase agreement or other business combination).

4.1.3. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

4.1.4. "Eligible Market" means the New York Stock Exchange, Inc., the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Global Market, and the NASDAQ Capital Market, and any successor to any of the foregoing.

4.1.5. "Person" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

4.1.6. "Required Holders" means the holders of record of a majority of the then outstanding shares of Series D Convertible Preferred Stock.

4.1.7. "Stated Value" shall mean $48 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, reverse stock splits or other similar events relating to the Series D Convertible Preferred Stock after the Initial Issuance Date.

4.1.8. "Trading Day" means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the shares of Common Stock are then traded; provided that "Trading Day" shall not include any day on which the shares of Common Stock are scheduled to trade on such exchange or market for less than 4.5 hours or any day that the shares of Common Stock are suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York Time).

4.1.9. "Voting Stock" means capital stock of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees thereof (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency that has not occurred at the time of determination).

4.2. Effecting a Deemed Liquidation Event.

4.2.1. The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in clause (A) of the definition of "Deemed Liquidation Event" unless the agreement or plan of merger or consolidation for such transaction (the "Merger Agreement") provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Section 3.

4.2.2. In the event of a Deemed Liquidation Event, if the Corporation does not effect a dissolution of the Corporation under the Delaware General Corporation Law ("DGCL") within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series D Convertible Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the repayment and cancellation of such shares of Series D Convertible Preferred Stock, and (iii) if the holders of at least 50% of the then outstanding shares of Series D Convertible Preferred Stock so request in a written instrument delivered to the Corporation not later than 30 days after receipt of the notice described in clause (i), the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors), together with any other assets of the Corporation available for distribution to its stockholders, subject to the rights of any other existing class of preferred stock, all to the extent permitted by Delaware law governing distributions to stockholders (the "Available Proceeds"), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to repay and cancel all outstanding shares of Series D Convertible Preferred Stock at a price per share equal to the Series D Liquidation Preference Amount. Notwithstanding the foregoing, in the event of a repayment pursuant to the preceding sentence, if the Available Proceeds are not sufficient to repay all outstanding shares of Series D Convertible Preferred Stock, the Corporation shall ratably repay each Holder's shares of Series D Convertible Preferred Stock to the fullest extent of such Available Proceeds, and shall repay the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or repayment provided for in this Section 4.2.2, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

4.3. Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon the occurrence of a Deemed Liquidation Event shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board of Directors.

4.4. Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to clause (A)(i) of the definition thereof, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), the transaction agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 3.1 and 3.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 4.4, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

5. Voting Rights.

5.1. General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each Holder shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series D Convertible Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Amended and Restated Certificate of Incorporation, the holders of Series D Convertible Preferred Stock shall vote together with the holders of Common Stock as a single class.

5.2. Election of Directors. The Holders of record of the shares of Series D Convertible Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "Series D Director"). If the holders of shares of Series D Convertible Preferred Stock fail to elect a director to fill the directorship for which they are entitled to elect a director, voting exclusively and as a separate class, pursuant to the first sentence of this Section 5.2, then the directorship not so filled shall remain vacant until such time as the holders of the Series D Convertible Preferred Stock elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Series D Convertible Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 5.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 5.2. The initial Series D Director shall be Mr. Andrew Heyer. The rights of the holders of the Series D Convertible Preferred Stock to elect a Series D Director shall terminate on the first date following the Initial Issuance Date on which the shares of Common Stock underlying the Series D Convertible Preferred Stock represent beneficial ownership (as such term is defined in Rule 13d-3 under the Exchange Act), in the aggregate, of less than five percent (5%) of the Corporation's issued and outstanding shares of Common Stock on an as-converted basis.

6. Conversion.

6.1. Holder's Right to Convert.

The holders of the Series D Convertible Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

6.1.1. Right to Convert.

6.1.1.1. Conversion Ratio. Each share of Series D Convertible Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Stated Value (plus any accrued but unpaid dividends) by the Series D Conversion Price (as defined below) in effect at the time of conversion (the result of such fraction, the "Series D Conversion Rate"). The "Series D Conversion Price" shall initially be equal to $6.00. Such initial Series D Conversion Price, and the rate at which shares of Series D Convertible Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. On the Initial Issuance Date, the Series D Conversion Rate shall be equal to 8 shares of Common Stock for each share of Series D Convertible Preferred Stock.

6.1.1.2. Termination of Conversion Rights. In the event of a liquidation, dissolution or winding up of the Corporation, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Series D Convertible Preferred Stock.

6.1.2. Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Series D Convertible Preferred Stock. In lieu of any fractional shares to which the Holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series D Convertible Preferred Stock the Holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

6.2. Mechanics of Conversion. The conversion of Series D Convertible Preferred Stock shall be conducted in the following manner:

6.2.1. Conversion Notice. The Holder of record of shares of Series D Convertible Preferred Stock being converted shall (A) transmit by email (or otherwise deliver) a copy of a properly completed notice of conversion executed by the registered Holder of the Series D Convertible Preferred Stock subject to such conversion in the form attached hereto as Exhibit A (the "Conversion Notice") to the Corporation and if the Corporation has appointed a registered transfer agent, the Corporation's registered transfer agent (the "Transfer Agent") (if the Corporation does not have a registered transfer agent, references hereto to the "Transfer Agent" shall be deemed to be references to the Corporation) and (B) if required by Section 6.2.3, surrender to a common carrier for delivery to the Corporation as soon as practicable following such date the original certificates, if any, representing the Series D Convertible Preferred Stock being converted (or compliance with the procedures set forth in Section 10) (the "Preferred Stock Certificates").

6.2.2. Corporation's Response. Upon receipt by the Corporation of a copy of a Conversion Notice, the Corporation shall (A) as soon as practicable, but in any event within three (3) Trading Days, send, via email, a confirmation of receipt of such Conversion Notice to such Holder and the Transfer Agent, if applicable, which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein and (B) on or before the third (3rd) Trading Day following the date of receipt by the Corporation of such Conversion Notice, (1) provided the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which the Holder shall be entitled to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled. If the number of shares of Series D Convertible Preferred Stock represented by the Preferred Stock Certificate(s) submitted for conversion is greater than the number of shares of Series D Convertible Preferred Stock being converted, then the Corporation shall or shall direct the Transfer Agent, as soon as practicable and in no event later than three (3) Business Days after receipt of the Preferred Stock Certificate(s) and at its own expense, issue and deliver to the Holder a new Preferred Stock Certificate representing the number of shares of Series D Convertible Preferred Stock not converted or it shall direct the Transfer Agent to update the Holder's account to reflect the number of shares of Series D Convertible Preferred Stock not converted.

6.2.3. Book-Entry. Notwithstanding anything to the contrary set forth herein, upon conversion of Series D Convertible Preferred Stock in accordance with the terms hereof, the Holder thereof shall not be required to physically surrender the Preferred Stock Certificate, if any, unless (A) the full or remaining number of shares of Series D Convertible Preferred Stock represented by the Preferred Stock Certificate are being converted, in which case the Holder shall deliver such Preferred Stock Certificate to the Corporation promptly following such conversion, or (B) a Holder has provided the Corporation with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Series D Convertible Preferred Stock upon physical surrender of any Series D Convertible Preferred Stock. The Holder and the Corporation shall maintain records showing the number of shares of Series D Convertible Preferred Stock so converted and the dates of such conversions or shall use such other method, reasonably satisfactory to the Holder and the Corporation, so as not to require physical surrender of the certificate representing the Series D Convertible Preferred Stock upon each such conversion. In the event of any dispute or discrepancy, such records of the Corporation establishing the number of shares of Series D Convertible Preferred Stock to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. Notwithstanding the foregoing, if Series D Convertible Preferred Stock represented by a certificate are converted as aforesaid, a Holder may not transfer the certificate representing the Series D Convertible Preferred Stock unless such Holder first physically surrenders the certificate representing the Series D Convertible Preferred Stock to the Corporation, whereupon the Corporation will forthwith issue and deliver upon the order of such Holder a new certificate of like tenor, registered as such Holder may request, representing in the aggregate the remaining number of shares of Series D Convertible Preferred Stock represented by such certificate. A Holder and any assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Series D Convertible Preferred Stock, the number of shares of Series D Convertible Preferred Stock represented by such certificate may be less than the number of shares of Series D Convertible Preferred Stock stated on the face thereof.

6.2.4. Reservation of Shares. The Corporation shall, so long as any shares of Series D Convertible Preferred Stock are outstanding, reserve and keep available out of its authorized and unissued Common Stock, solely for the purpose of effecting the conversion of the Series D Convertible Preferred Stock according to the terms hereof, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all of the Series D Convertible Preferred Stock then outstanding; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series D Convertible Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in all reasonable efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series D Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series D Convertible Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Series D Convertible Conversion Price.

6.2.5. Dispute Resolution. In the case of a dispute as to the arithmetic calculation of the Series D Conversion Rate, the Corporation shall issue to the Holder the number of shares of Common Stock that is not disputed and shall transmit an explanation of the disputed determinations or arithmetic calculations to the Holder via email within one (1) Business Day of receipt of such Holder's Conversion Notice or other date of determination. If such Holder and the Corporation are unable to agree upon the determination of the arithmetic calculation of the Series D Conversion Rate within two (2) Business Days of such disputed determination or arithmetic calculation being transmitted to the Holder, then the Corporation shall within one (1) Business Day submit via email the disputed arithmetic calculation of the Series D Conversion Rate to any "big four" international accounting firm that is reasonably acceptable to the Corporation and the Holder. The Corporation shall cause, at the Corporation's expense (unless the accounting firm determines in favor of the Corporation, in which case the Holder shall be responsible for such expense), the accountant to perform the determinations or calculations and notify the Corporation and the Holders of the results no later than five (5) Business Days from the time it receives the disputed determinations or calculations. Such accountant's determination or calculation, as the case may be, shall be binding upon all parties absent error.

6.2.6. Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Series D Convertible Preferred Stock shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the date of conversion.

6.2.7. Effect of Conversion. All shares of Series D Convertible Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote in the capacity of a Holder, shall forthwith cease and terminate except only the right of the holder thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversation as provided in Section 6.1.2, and payment of any accrued but unpaid dividends thereon (whether or not declared). Any shares of Series D Convertible Preferred Stock so converted shall be retired and canceled and shall not be reissued, and the Corporation may from time to time take such appropriate action as may be necessary to reduce the authorized Series D Convertible Preferred Stock accordingly.

6.2.8. Transfer Taxes. The issuance of certificates, if any, for shares of the Common Stock on conversion of this Series D Convertible Preferred Stock shall be made without charge to the Holder hereof for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the Holder of such shares of Series D Convertible Preferred Stock so converted and the Corporation shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

6.2.9. Corporation's Failure to Timely Convert. If within three (3) Trading Days after the Corporation’s receipt of the copy of a Conversion Notice, the Corporation shall fail to credit a Holder's balance account with DTC or issue and deliver a certificate to such Holder for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion of Series D Convertible Preferred Stock (a "Conversion Failure"), and if on or after such third (3^{rd}) Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Corporation (a "Buy-In"), then, in addition to all other remedies available to the Holder, the Corporation shall, within three (3) Trading Days after the Holder's request pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and out-of-pocket expenses, if any) for the shares of Common Stock so purchased (the "Buy-In Price"), at which point the Corporation's obligation to deliver such certificate (and to issue such Common Stock) shall terminate. “Closing Sale Price” means, for the shares of Common Stock as of any date, the last closing price for such security on the principal market on which such security is traded, as reported by Bloomberg L.P., or if the foregoing does not apply, the last closing price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg L.P., or, if no closing price is reported for such security by Bloomberg L.P., the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC).

6.3. Corporation's Right to Convert.

6.3.1. At any time or from time to time after the Initial Issuance Date of the Series D Convertible Preferred Stock, if the volume weighted average price per share, as published by Bloomberg L.P. (or if Bloomberg L.P. does not then exist, a comparable publication) ("VWAP") of the shares of Common Stock of the Corporation on its principal trading market that is an Eligible Market (the "Principal Market") over any twenty (20) of the thirty (30) consecutive Trading Days exceeds $9.00 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization) (the "Corporation Conversion Right Event"), the Corporation will have the right, but not the obligation, by notice given no more than ten (10) Trading Days after the occurrence of such Corporation Conversion Right Event, to convert each outstanding share of Series D Convertible Preferred Stock into a number of fully paid and nonassessable shares of Common Stock calculated based on the then applicable Series D Conversion Rate.

6.3.2. To exercise the Corporation's right set forth in Section 6.3.1, the Corporation shall deliver to each Holder of record of Series D Convertible Preferred Stock an irrevocable written notice (a "Corporation Conversion Notice") during the ten (10) Trading Day period referenced above indicating the effective date of the conversion (the "Corporation Conversion Date"), which Corporation Conversion Date shall be not more than sixty (60), nor less than five (5), days following delivery of the Corporation Conversion Notice.

6.3.3. On the Corporation Conversion Date, the outstanding shares of Series D Convertible Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares, if any, are surrendered to the Corporation or its Transfer Agent, and certificates previously representing shares of Series D Convertible Preferred shall represent only the shares of Common Stock into which the shares of Series D Convertible Preferred previously represented thereby have been converted pursuant hereto; *provided*, *however*, that the Corporation shall not be obligated to issue the shares of Common Stock issuable upon such conversion of any shares of Series D Convertible Preferred unless certificates evidencing such shares of Series D Convertible Preferred, if any, are either delivered to the Corporation or the holder notifies the Corporation that such certificates, if any, have been lost, stolen, or destroyed, and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the occurrence of the conversion of the Series D Convertible Preferred pursuant to this Section 6.3, the Holders of shares of Series D Convertible Preferred shall surrender the certificates representing such shares to the Corporation and the Corporation shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section 6.2.2) to the Holder within three (3) Business Days of the Holder's delivery of the applicable Series D Convertible Preferred certificates.

7. Repayment of Series D Convertible Preferred Stock.

7.1. General. On the date that is the seven (7) year anniversary after the Initial Issuance Date of the Series D Convertible Preferred (the "Maturity Date"), the Corporation shall, in accordance with Section 7.2 hereof, repay and cancel each share of Series D Convertible Preferred, at a price per share of the Series D Convertible Preferred equal to the Series D Liquidation Preference Amount, plus an amount equal to any accrued but unpaid dividends payable thereon until the Maturity Date.

7.2. Share Issuance.

7.2.1. On the Maturity Date, the Corporation, at its sole option, may elect to pay to the Holders the Series D Liquidation Preference Amount pursuant to Section 7.1: (i) in cash; (ii) by delivery of shares of Common Stock; or (iii) through any combination of cash and/or Common Stock.

7.2.2. If the Corporation elects to make a payment, or any portion thereof, pursuant to this Section 7, in shares of Common Stock, the number of shares deliverable shall be determined by (A) dividing (x) the cash amount of such payment that would apply if no payment were to be made in Common Stock, or such portion, *by* (y) the VWAP of the Common Stock for the period of thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding the Maturity Date (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization during such period) (the "Base Price") and adding to the number of shares determined in accordance with clause (A), (B) an additional number of shares of Common Stock (the "Premium Shares"), calculated as follows: (i) if the Base Price as calculated pursuant to clause (A) above is greater than $9.00, no Premium Shares shall be issued, (ii) if the Base Price as calculated pursuant to clause (A) above is greater than $7.00 and equal to or less than $9.00, a number of shares equal to 5% of the shares to be issued pursuant to Section 7.2.2(A), (iii) if the Base Price as calculated pursuant to clause (A) above is greater than $6.00 and equal to or less than $7.00, a number of shares equal to 10% of the shares to be issued pursuant to Section 7.2.2(A), (iv) if the Base Price as calculated pursuant to clause (A) above is greater than $5.00 and equal to or less than $6.00, a number of shares equal to 20% of the shares to be issued pursuant to Section 7.2.2(A) and (v) if the Base Price as calculated pursuant to clause (A) above is less than or equal to $5.00, a number of shares equal to 25% of the shares to issued pursuant to Section 7.2.2(A). All per share prices set forth in Section 7.2.2 shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization after the Initial Issuance Date.

8. Adjustment of Series D Conversion Price.

8.1.1. Adjustment of Series D Conversion Price upon Subdivision or Combination of Common Stock. The Series D Conversion Price shall be subject to adjustment from time to time in accordance with this Section 8. If the Corporation at any time after the Initial Issuance Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Series D Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. If the Corporation at any time after the Initial Issuance Date combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Series D Conversion Price in effect immediately prior to such combination will be proportionately increased.

8.1.2. Adjustment for Merger or Reorganization, etc. Subject to the provisions of Section 4, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Series D Convertible Preferred Stock) is converted into or exchanged for securities, cash or other property, then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series D Convertible Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Series D Convertible Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 8 with respect to the rights and interests thereafter of the holders of the Series D Convertible Preferred Stock, to the end that the provisions set forth in this Section 8 (and the provisions with respect to changes in and other adjustments of the Series D Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

8.2. Notices.

8.2.1. Immediately upon any adjustment of the Series D Conversion Rate and Series D Conversion Price pursuant to Section 8 hereof, the Corporation will give written notice thereof sent by mail, first class, postage prepaid to each Holder at its address appearing on the stock register, setting forth in reasonable detail, and certifying, the calculation of such adjustment. In the case of a dispute as to the determination of such adjustment, then such dispute shall be resolved in accordance with the procedures set forth in Section 6.2.5.

8.2.2. Except as otherwise required by law, the Corporation will give written notice to each Holder at least ten (10) Business Days prior to the date on which the Corporation closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, or (B) with respect to any pro rata subscription offer to holders of Common Stock.

8.2.3. The Corporation will also give written notice to each Holder at least ten (10) Business Days prior to the date on which a Deemed Liquidation Event will take place.

9. Status of Converted Stock. In the event any shares of Series D Convertible Preferred Stock shall be converted pursuant to Sections 6 or 7 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation.

10. Lost or Stolen Certificates. Upon receipt by the Corporation of evidence reasonably satisfactory to the Corporation of the loss, theft, destruction or mutilation of any Series D Convertible Preferred Stock Certificates representing the Series D Convertible Preferred Stock, if any, and, in the case of loss, theft or destruction, of an indemnification undertaking (with surety, if reasonably requested by the Corporation) by the holder thereof to the Corporation in customary form and, in the case of mutilation, upon surrender and cancellation of the Series D Convertible Preferred Stock Certificate(s), the Corporation shall execute and deliver new preferred stock certificate(s) of like tenor and date; provided, however, the Corporation shall not be obligated to re-issue preferred stock certificates if the holder contemporaneously requests the Corporation to convert such Series D Convertible Preferred Stock into Common Stock.

11. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation, at law or in equity (including a decree of specific performance and/or other injunctive relief). No remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit a holder of Series D Convertible Preferred Stock's right to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designation. The Corporation covenants to each holder of Series D Convertible Preferred Stock that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the holder of Series D Convertible Preferred Stock thereof and shall not, except as expressly provided herein, be subject to any other obligation of the Corporation (or the performance thereof). The Corporation acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the holders of Series D Convertible Preferred Stock and that the remedy at law for any such breach may be inadequate. The Corporation therefore agrees that, in the event of any such breach or threatened breach, the holders of Series D Convertible Preferred Stock shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

12. Notice. Whenever notice or other communication is required to be given hereunder, unless otherwise provided herein, such notice shall be given in accordance with contact information provided by each Holder to the Corporation and set forth in the register for the Series D Convertible Preferred Stock maintained by the Corporation as set forth in Section 15.

13. Failure or Indulgence Not Waiver. No failure or delay on the part of any holder of Series D Convertible Preferred Stock in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

14. Transfer of Series D Convertible Preferred Stock. A Holder may assign some or all of the Series D Convertible Preferred Stock and the accompanying rights hereunder held by such Holder without the consent of the Corporation; provided that such assignment is in compliance with applicable securities laws.

15. Series D Convertible Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders), a register for the Series D Convertible Preferred Stock, in which the Corporation shall record the name, address and email address of the persons in whose name the Series D Convertible Preferred Stock have been issued, as well as the name, address and email address of each transferee. The Corporation may treat the person in whose name any Series D Convertible Preferred Stock is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

16. Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Corporation pursuant to the DGCL, this Certificate of Designation or otherwise with respect to the issuance of the Series D Convertible Preferred Stock or the Common Stock issuable upon conversion thereof may be effected by written consent of the Corporation's stockholders or at a duly called meeting of the Corporation's stockholders, all in accordance with the applicable rules and regulations of the DGCL and the applicable provisions hereof. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

17. General Provisions. In addition to the above provisions with respect to Series D Convertible Preferred Stock, such Series D Convertible Preferred Stock shall be subject to and be entitled to the benefit of the provisions set forth in the Amended and Restated Certificate of Incorporation of the Corporation with respect to preferred stock of the Corporation generally.

18. Waiver and Amendment. Any of the rights, powers, preferences and other terms of the Series D Convertible Preferred Stock set forth herein may be waived or amended on behalf of all holders of Series D Convertible Preferred Stock by the affirmative written consent or vote of the holders of at least 50 % of the shares of Series D Convertible Preferred Stock then outstanding.

signature page follows

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed by the undersigned this 23rd day of December, 2016.

FORM HOLDINGS CORP.

By:_____
Name: Andrew D. Perlman
Title: Chief Executive Officer

EXHIBIT A

FORM HOLDINGS CORP.

The undersigned hereby elects to convert the number of shares of Series D Convertible Preferred Stock, par value $0.01 per share (the "**Series D Convertible Preferred Stock**"), of Form Holdings Corp., a Delaware corporation (the "**Corporation**"), indicated below into shares of Common Stock, par value $0.01 per share (the "**Common Stock**"), of the Corporation, as of the date specified below.

Date of Conversion:_____

Number of shares of Series D Convertible Preferred Stock to be converted:_____

Stock certificate no(s). of Series D Convertible Preferred Stock to be converted:_____

Tax ID Number (If applicable):_____

Please confirm the following information:_____

Series D Conversion Price: _____

Number of shares of Common Stock to be issued:

Please issue the Common Stock into which the Series D Convertible Preferred Stock are being converted in the following name and to the following address:

Issue to:_____
_____

Address: _____

Telephone Number: _____

Email address:_____

Authorization:_____

By:_____

Title:_____

Dated:

Account Number (if electronic book entry transfer):_____

Transaction Code Number (if electronic book entry transfer):_____

Exhibit 10.1

EXECUTION VERSION

INDEPENDENT DIRECTOR'S AGREEMENT

This **INDEPENDENT DIRECTOR'S AGREEMENT** (the "**Agreement**") is made as of December 23, 2016, by and between FORM Holdings Corp., a Delaware corporation (hereinafter referred to as the "**Company**"), and Andrew R. Heyer (the "**Director**").

BACKGROUND

WHEREAS, the Board of Directors of the Company (the "**Board of Directors**") desires to appoint the Director to perform the duties of an "independent" director (within the meaning of the rules of the U.S. Securities and Exchange Commission (the "**SEC**")) and, potentially in the future, on committees of the Board of Directors, and the Director desires to be so appointed for such position(s) and to perform the duties required of such position(s) in accordance with the terms and conditions of this Agreement.

WHEREAS, the Director has been elected by the holders of the Company's Series D Preferred Stock, in accordance with the terms of the Company's certificate of incorporation, as amended from time to time.

AGREEMENT

NOW, THEREFORE, in consideration for the above recited premises and the mutual promises contained herein, and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Company and the Director hereby agree as follows:

1. DUTIES. The Company requires that the Director be available to perform the duties customarily related to an independent director as may be determined and assigned by the Board of Directors and as may be required by the Company's constituent instruments, including its certificate of incorporation, by-laws and its corporate governance and board committee charters, each as amended or modified from time to time, and by applicable law, including, without limitation, the Delaware General Corporation Law (the "**DGCL**") and the rules and regulations of the SEC, any exchange or quotation system on which the Company's securities may be traded from time to time and all other applicable legal or regulatory requirements. Initially, the Company and the Director have agreed that the Director will serve as a member of the Audit Committee and the Compensation Committee, effective immediately. The Director agrees to use commercially reasonable efforts to devote as much time as is necessary to perform the duties as an independent director in accordance with such Company requirements, including duties as a member of committees of the Board of Directors as the same may be established from time to time. The Director will use commercially reasonable efforts to attend meetings of the Board of Directors and its committees as the Director may be appointed to, in person or by teleconference. The Director will perform such duties described herein in accordance with the fiduciary duties of directors arising under the DGCL.

2. TERM. The term of this Agreement shall commence as of the date hereof and shall continue until the Director's successor is elected and qualified or until his earlier death, incapacity, removal or resignation. The Board of Directors or a designated committee thereof shall have the discretion to nominate or decline to nominate the Director for election at each annual or applicable special meeting of the Company's stockholders (subject to the provisions of the Company's constituent documents, including the terms of the Company's Series D Preferred Stock), and the failure to nominate the Director as, if and when such nominations are made shall be deemed a termination of this Agreement for purposes of Section 8 hereof.

3. COMPENSATION. Subject to the approvals by the Compensation Committee or the Board of Directors, for all duties and services to be performed by the Director hereunder, the Director will be entitled to earn cash fees under guidelines and rules established by the Company from time to time for compensating non-employee directors for serving on, and attending meetings of, committees of its Board of Directors and the boards of directors of its subsidiaries. In addition to the cash fees described above, the Company may grant the Director options to purchase or restricted shares of the Company's common stock (collectively, the "**Shares**") under the Company's director compensation plans adopted from time to time. No registration rights are hereby granted with respect to the Shares.

4. MARKET STAND-OFF AGREEMENT. Director agrees to be subject to Section [2.11] ("Market Stand-off" Agreement) of the Registration Rights Agreement, dated as of August 8, 2016, as amended (the "**Registration Rights Agreement**"), as if Director were an Investor thereunder.

5. EXPENSES. In addition to the compensation provided in paragraph 3 hereof, the Company will reimburse the Director for pre-approved reasonable business related expenses incurred in good faith in the performance of the Director's duties for the Company including attending meetings of the Board of Directors and its committees as the Director may be appointed to. Such payments shall be made by the Company upon submission by the Director of a signed statement itemizing the expenses incurred. Such statement shall be accompanied by sufficient documentary matter to support the expenditures.

6. OTHER AGREEMENTS.

(a) **CONFIDENTIAL INFORMATION AND INSIDER TRADING**. The Company and the Director each acknowledge that, in order for the intents and purposes of this Agreement to be accomplished, the Director shall necessarily be obtaining access to certain confidential information concerning the Company and its affairs, including, but not limited to, business methods, information systems, financial data and strategic plans which are unique assets of the Company (as further defined below, the "**Confidential Information**") and that the communication of such Confidential Information to third parties could irreparably injure the Company and its business. Accordingly, Director agrees that, during his association with the Company and thereafter, he will treat and safeguard as confidential and secret all Confidential Information received by him at any time and that, without the prior written consent of the Company, he will not disclose or reveal any of the Confidential Information to any third party whatsoever or use the same in any manner except in connection with the business of the Company and in any event in no way harmful to or competitive with the Company or its business. For purposes of this Agreement, "Confidential Information" means any information not generally known to the public or recognized as confidential according to standard industry practice, any trade secrets, know-how, development, manufacturing, marketing and distribution plans and information, inventions, formulas, methods or processes, whether or not patented or patentable, pricing policies and records of the Company (and such other information normally understood to be confidential or otherwise designated as such in writing by the Company), all of which Director expressly acknowledges and agrees shall be confidential and proprietary information belonging to the Company. Confidential Information will not include (i) information which was known to the Director or his agents prior to receipt from the Company; (ii) information which is or becomes generally known other than as a result of a breach of a duty of confidentiality by the Director; (iii) information acquired by the Director or his agents from a third party who was not bound to an obligation of confidentiality; and (iv) disclosure required by applicable law. Upon termination of his association with the Company, Director shall return to the Company all Confidential Information, together with any copies thereof, or certify that he has destroyed all such documents and papers. Notwithstanding the redelivery and destruction obligations of this Section 6(a), the Director may retain one archival copy of the Confidential Information to comply with recordkeeping or regulatory requirements; provided, that such archival material shall remain subject to the confidentiality provisions of this Section 6(a).

Furthermore, Director recognizes that the Company has received and in the future will receive confidential or proprietary information from third parties subject to a duty on the Company's part to maintain the confidentiality of such information and, in some cases, to use it only for certain limited purposes. Director agrees that Director owes the Company and such third parties, both during the term of Director's association with the Company and thereafter, a duty to hold all such confidential or proprietary information in the strictest confidence and not to, except as is consistent with the Company's agreement with the third party, disclose it to any person or entity or use it for the benefit of anyone other than the Company or such third party, unless expressly authorized to act otherwise by an officer of the Company. In addition, Director acknowledges and agrees that Director may have access to "material non-public information" for purposes of the federal securities laws ("**Insider Information**") and that the Director will abide by all securities laws relating to the handling of and acting upon such Insider Information. Further, Director agrees to sign an acknowledgement certifying that Director has reviewed the Company's Insider Trading Manual and understands the policies and procedures contained therein and agrees to be bound by them.

Notwithstanding the foregoing, the Director may disclose Confidential Information and other confidential information to his affiliates and his and their respective agents, partners, attorneys, accountants, and other advisors who are subject to confidentiality obligations with respect thereto.

The Company acknowledges and agrees that the Director generally may not be permitted to disclose to the Company any confidential information related to Director's affiliates (including investment vehicles advised by Mistral Capital Management, LLC) and that the Director may recuse himself without explanation from any Board of Directors discussions in which such disclosures might otherwise be required.

Director's obligations under this Section 6(a) shall terminate 12 months after he ceases to be a member of the Board of Directors.

(b) **COVENANT AGAINST SOLICITATION.** The Director agrees that during, and for twelve (12) months after, the period in which Director is a director of the Company, Director shall not, directly or indirectly, either alone or in association with others, without the prior written approval of the Company, in any manner whatsoever, request, solicit, encourage or assist any employee, officer, director or consultant of or to the Company to terminate their relationship with the Company or any of its affiliates, or join with any of them before or after the termination by any of them of any such relationship in any direct or indirect capacity in any competing business.

(c) **DISPARAGING STATEMENTS**. At all times during the period in which Director is a member of the Board of Directors, Director shall not either verbally, in writing, electronically or otherwise: (i) make any derogatory or disparaging statements about the Company, any of its affiliates, any of their respective officers, directors, employees and agents, or any of the Company's current or past customers or employees, or (ii) make any public statement or perform or do any other act prejudicial or injurious to the reputation or goodwill of the Company or any of its affiliates or otherwise interfere with the business of the Company or any of its affiliates; provided, however, that nothing in this paragraph shall preclude the Director from complying with all obligations imposed by law or legal compulsion, and provided, further, however, that nothing in this paragraph shall be deemed applicable to any testimony given by Director in any legal or administrative proceedings.

At all times during the period in which Director is a director of the Board of Directors, the Company shall not (and shall cause its officers and directors not to) either verbally, in writing, electronically or otherwise: (i) make any derogatory or disparaging statements about the Director, any of his affiliates, any of their respective officers, directors, employees and agents, or any of the Director's or his affiliates' current or past customers or employees, or (ii) make any public statement or perform or do any other act prejudicial or injurious to the reputation or goodwill of the Director or any of his affiliates or otherwise interfere with the business of the Director or any of his affiliates; provided, however, that nothing in this paragraph shall preclude the Company (or its officers and directors) from complying with all obligations imposed by law or legal compulsion, and provided, further, however, that nothing in this paragraph shall be deemed applicable to any testimony given by the Company (or its officers and directors) in any legal or administrative proceedings.

(d) **ENFORCEMENT.** The Director and the Company each acknowledges and agrees that the covenants contained in this Section 6 are reasonable, that valid consideration has been and will be received and that the agreements set forth herein are the result of arms-length negotiations between the parties hereto. The Director and the Company each recognizes that the provisions of this Section 6 are vitally important to the continuing welfare of the other and his/its affiliates, and that any violation of this Section 6 could result in irreparable harm to the Company and its affiliates or the Director and its affiliates, respectively, for which money damages would constitute a totally inadequate remedy. Accordingly, in the event of any such violation by the Director or the Company, in addition to any other remedies they may have, the Company and its affiliates or the Director and its affiliates, respectively, shall have the right to institute and maintain a proceeding to compel specific performance thereof or to obtain an injunction or other equitable relief restraining any action by the Director or the Company, respectively, in violation of this Section 6 without posting any bond therefor or demonstrating actual damages, and Director or the Company, respectively, will not claim as a defense thereto that the Company or the Director, respectively, has an adequate remedy at law or require the posting of a bond. If any of the restrictions or activities contained in this Section 6 shall for any reason be held by a court of competent jurisdiction to be excessively broad as to duration, geographical scope, activity or subject, such restrictions shall be construed so as thereafter to be limited or reduced to be enforceable to the extent compatible with the applicable law; it being understood that by the execution of this Agreement the parties hereto regard such restrictions as reasonable and compatible with their respective rights. Director and the Company each acknowledges that injunctive relief may be granted immediately upon the commencement of any such action without notice to the other party and in addition that the other party may recover monetary damages.

(e) **SEPARATE AGREEMENT.** The parties hereto further agree that the provisions of Section 6 are separate from and independent of the remainder of this Agreement and that Section 6 is specifically enforceable by each party notwithstanding any claim made by one party against the other. The terms of this Section 6 shall survive termination of this Agreement in accordance with its terms.

7. NOTICE OF MATERIAL CHANGE IN FINANCIAL CONDITION OF THE COMPANY. The Company shall endeavor to notify the Director in writing, at the earliest practicable time, of any material adverse change in the financial condition of the Company.

8. TERMINATION. With or without cause, Director may terminate this Agreement and Director's director position with the Company at any time upon written notice to the Company. In such event, the Company shall be obligated to pay to the Director the compensation and expenses incurred in accordance with this Agreement due up to the date of the termination.

Nothing contained herein or omitted herefrom shall prevent the stockholders of the Company from removing Director with immediate effect at any time for any reason or voting for or against the nomination of Director to serve as such at any annual or special meeting of the Company's stockholders.

9. INDEMNIFICATION; INSURANCE. The Company shall indemnify, defend and hold harmless the Director, to the full extent allowed by the law of the State of Delaware, and as provided by, or granted pursuant to the Company's Certificate of Incorporation (as amended and/or restated from time to time) (the "**COI**"), By-laws (as amended and/or restated from time to time) (the "**By-Laws**"), or any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in the Director's official capacity and as to action in another capacity relating to the Company's business while holding such office except for matters arising out of the Director's gross negligence or willful misconduct. Such indemnification shall cover payment for or reimbursement of expenses (including legal fees and expenses) to the fullest extent provided for in the COI and the By-Laws. The Company shall also enter into the form of indemnification agreement attached hereto as Exhibit A. The Company’s compliance with the following insurance provision shall not relieve the Company from liability under this indemnity provision.

The Company shall have and maintain at its sole cost and expense throughout the term of this Agreement and for six (6) years thereafter, directors’ and officers’ insurance from a recognized insurance company for the benefit of all of its directors and executive officers.

10. AMENDMENTS; WAIVERS. No provision of this Agreement may be waived or amended except in a written instrument signed, in the case of an amendment, by the Company and the Director or, in the case of a waiver, by the party against whom enforcement of any such waiver is sought. No waiver of any breach with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent breach or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right.

11. NOTICE. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) within 24 hours, when sent by electronic mail; or (iii) one (1) business day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

If to the Company:

Attention:	Chief Executive Officer
Address:	780 Third Avenue, 15th Floor
	New York, NY 10017
Email:	APerlman@formholdings.com

With a copy (for informational purposes only) to:

Mintz Levin Cohn Ferris Glovsky and Popeo PC	
Attention:	Kenneth R. Koch, Esq.
Address:	666 Third Avenue
	New York, NY 10017
Email:	krkoch@mintz.com

If to the Director, to him at the address listed on Exhibit B hereto.

or to such other address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's computer containing the time and date or (C) provided by an overnight courier service, shall be rebuttable evidence of personal service, receipt by electronic mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

12. GOVERNING LAW AND DISPUTE RESOLUTION. This Agreement shall be interpreted in accordance with, and the rights of the parties hereto shall be determined by the laws of Delaware without reference to its conflicts of laws principles. Should a dispute arise between the parties under or relating to this Agreement, each party agrees that prior to initiating any formal proceeding against the other (except when injunctive relief is appropriate), the parties will each designate a representative for purposes of resolving the dispute. If the parties' representatives are unable to resolve the dispute within 14 business days, the dispute shall be settled by mediation and then, if necessary, by arbitration under the then-current commercial arbitration rules of the American Arbitration Association. The location of the proceeding shall be in New York, NY. The award in any such arbitration shall be final, binding, conclusive and not appealable. Judgment upon any award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

13. ASSIGNMENT. The rights and benefits of the Company under this Agreement shall be transferable, and all the covenants and agreements hereunder shall inure to the benefit of, and be enforceable by or against, its successors and assigns. The duties and obligations of the Director under this Agreement are personal and therefore the Director may not assign any right or duty under this Agreement without the prior written consent of the Company.

14. SEVERABILITY. If any provision of this Agreement shall be declared invalid or illegal, for any reason whatsoever, then, notwithstanding such invalidity or illegality, the remaining terms and provisions of the this Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein.

15. HEADINGS; CONSTRUCTION. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

16. NO THIRD-PARTY BENEFICIARIES. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other person or entity.

17. WITHHOLDING. The Company may withhold from any and all amounts payable under this Agreement such federal, state, local and foreign taxes as may be required to be withheld pursuant to any applicable law or regulation.

18. ENTIRE AGREEMENT. Subject to the provisions of the DGCL and the Company's certificates of incorporation and bylaws, this Agreement and the exhibits hereto set forth the entire agreement of the parties with respect to its subject matter and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party to this Agreement with respect to such subject matter.

19. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof. Execution and delivery of this Agreement by facsimile or other electronic signature is legal, valid and binding for all purposes.

20. ACKNOWLEDGMENT. The Company acknowledges that the Director and his affiliates are in the business of venture capital, growth equity, and private equity investing and therefore review the business plans and related proprietary information of many enterprises, including enterprises which may have products or services which compete directly or indirectly with those of the Company. Nothing in this Agreement shall preclude or in any way restrict the Director or any of his affiliates from investing or participating in any particular enterprise whether or not such enterprise has products or services which compete with those of the Company. The Company also hereby agrees that, to the extent permitted under applicable law, the Director and his affiliates shall not be liable to the Company for any claim arising out of, or based upon, (i) the investment by such Investor in any entity competitive with the Company, or (ii) actions taken by any partner, officer or other representative of the Director or any of his affiliates to assist any such competitive company, whether or not such action was taken as a member of the board of directors of such competitive company or otherwise, and whether or not such action has a detrimental effect on the Company; *provided, however*, that the foregoing shall not relieve (x) the Director from liability associated with the unauthorized disclosure of the Company's confidential information obtained pursuant to this Agreement, or (y) any director or officer of the Company from any liability associated with his or her fiduciary duties to the Company.

Signature Page Follows
Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

FORM Holdings Corp.

By: _____
Name:
Title:

DIRECTOR

_____

Andrew R. Heyer

EXHIBIT A: INDEMNIFICATION AGREEMENT

[*see attached*]

EXHIBIT B: DIRECTOR'S ADDRESS

Andrew R. Heyer
c/o Mistral Capital Management, LLC
650 Fifth Avenue, 31st Floor
New York, NY 10019
Email: aheyer@mistralequity.com

With a copy (which shall not constitute effective notice) to:

DLA Piper LLP (US)
1251 Avenue of the Americas
New York, NY 10020
Attention: Sidney Burke
Email: sidney.burke@dlapiper.com

Exhibit 99.1

FORM HOLDINGS ANNOUNCES CLOSING OF XPRESSPA ACQUISITION

NEW YORK – December 23, 2016 – FORM Holdings Corp. (NASDAQ: FH), a diversified holding company focused on acquiring, investing in and developing small to mid-market businesses, today announced the closing of its acquisition of XpresSpa Holdings LLC (“XpresSpa”). XpresSpa is now a wholly-owned subsidiary of FORM Holdings Corp.

On August 8, 2016, FORM Holdings entered into a definitive agreement to acquire 100% of XpresSpa. On November 28, 2016, FORM Holdings' stockholders approved the acquisition, and, on December 23, 2016, the transaction closed.

"We are excited to call XpresSpa a FORM Holdings company," said Andrew Perlman, FORM’s Chief Executive Officer. "Since announcing the agreement to acquire XpresSpa in August, the company’s store level performance has outperformed all of our expectations. I look forward to working closely with Ed Jankowski and the XpresSpa team, and am delighted to welcome Andrew Heyer to our board of directors. Our management team and board of directors continue to feel strongly that this is a transformative acquisition for our company. We look forward to updating the market on recent developments at XpresSpa as well as our expectations and vision for 2017 and beyond," Mr. Perlman continued.

"Since I joined XpresSpa in June of this year, the company has been focused on a variety of initiatives to build value and strengthen the XpresSpa brand," said Ed Jankowski, XpresSpa's Chief Executive Officer. "This transaction will help accelerate our growth, and we are very happy to be a part of the FORM Holdings family," Mr. Jankowski continued.

"Having been a part of many innovative retail companies and concepts, both inside and outside of the airport, I can say that I am particularly excited about this transaction," said Andrew Heyer, Chief Executive Officer of Mistral Equity Partners, and now, also a director of FORM Holdings. "I look forward to being a significant shareholder of FORM Holdings and working with the team as a board member." Mr. Heyer continued.

FORM Holdings will issue a comprehensive business update early in the first quarter of 2017.

About FORM Holdings Corp.

FORM Holdings Corp. (NASDAQ: FH) is a publicly held diversified holding company that specializes in identifying, investing in and developing companies with superior growth potential. FORM's current holdings include Group Mobile, FLI Charge, Infomedia and intellectual property assets. Group Mobile is a provider of rugged, mobile and field-use computing products, serving customers worldwide. FLI Charge designs, develops, licenses, manufactures and markets wireless conductive power and charging solutions. Infomedia is a leading provider of customer relationship management and monetization technologies to mobile carriers and device manufacturers. FORM Holdings' intellectual property division is engaged in the development and monetization of intellectual property. To learn more about Form Holdings Corp., visit: www.FormHoldings.com.

About XpresSpa

XpresSpa is the industry-leading luxury travel spa business, serving almost one million air travelers each year at its 51 stores worldwide as of December 23, 2016. XpresSpa offers travelers premium spa services, including massages, reflexology, stress and tension release, manicures, pedicures, facials and waxing. Its Xpress nail, massage and hair blow-out services are designed specifically for the busy traveling customer, with treatments completed in 30 minutes or less. In stores and online, XpresSpa also offers exclusive luxury travel products and accessories, including travel pillows, blankets, massagers, and personal, hair, nail and bath and body products. XpresSpa has over 750 employees, including talented teams of professionally licensed massage therapists, cosmetologists and nail technicians who are committed to providing exceptional customer experiences.

Forward-Looking Statements

This press release includes forward-looking statements, which may be identified by words such as "believes," "expects," "anticipates," "estimates," "projects," "intends," "should," "seeks," "future," "continue," or the negative of such terms, or other comparable terminology. Forward-looking statements are statements that are not historical facts. Such forward-looking statements are subject to risks and uncertainties, which could cause actual results to differ materially from the forward-looking statements contained herein. Statements in this press release regarding the potential value created by the merger for FORM's stockholders and XpresSpa's equity holders; the potential of FORM's business after completion of the merger; XpresSpa's projected revenue, the ability to raise capital to fund operations and business plan; the continued listing of FORM's securities on the Nasdaq Capital Market; market acceptance of FORM products; the collective ability to protect intellectual property rights; competition from other providers and products; FORM's management and board of directors after completion of the Merger; and any other statements about FORM's or XpresSpa's management teams' future expectations, beliefs, goals, plans or prospects constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. There are a number of important factors that could cause actual results or events to differ materially from those indicated by such forward-looking statements, including, but not limited to: the inability to realize the potential value created by the merger for FORM's stockholders; FORM's inability to maintain the listing of its securities on the Nasdaq Capital Market after completion of the merger; the potential lack of market acceptance of FORM's products; FORM's inability to monetize and recoup FORM's investment with respect to assets and other businesses that that were acquired or will be acquired in the future; general economic conditions and level of information technology and consumer electronics spending; unexpected trends in the mobile phone and telecom computing industries; the potential loss of one or more of FORM's significant Original Equipment Manufacturer (“OEM”) suppliers, the potential lack of market acceptance of FORM's products; market acceptance, quality, pricing, availability and useful life of FORM's products and services, as well as the mix of FORM's products and services sold; potential competition from other providers and products; FORM's inability to license and monetize FORM's patents, including the outcome of litigation; FORM's inability to develop and introduce new products and/or develop new intellectual property; FORM's inability to protect FORM's intellectual property rights; new legislation, regulations or court rulings related to enforcing patents, that could harm FORM's business and operating results; FORM's inability to retain key members of its management team; and other risks and uncertainties and other factors discussed from time to time in our filings with the Securities and Exchange Commission ("SEC"), including FORM's Annual Report on Form 10-K for the year ended December 31, 2015 filed with the SEC on March 10, 2016. Investors and stockholders are also urged to read the risk factors set forth in the proxy statement/prospectus carefully when they are available. FORM expressly disclaims any obligation to publicly update any forward-looking statements contained herein, whether as a result of new information, future events or otherwise, except as required by law.

Contacts

FORM HOLDINGS
212-309-7549
info@FormHoldings.com