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

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**Form 10-K**

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**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended December 31, 2020  
or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number 000-28275

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**PFSweb, Inc.**

(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction of  
incorporation or organization)

75-2837058  
(I.R.S. Employer  
Identification Number)

505 Millennium Drive, Allen, Texas  
(Address of principal executive offices)

75013  
(Zip Code)

Registrant's telephone number, including area code  
972-881-2900

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	PFSW	NASDAQ Capital Market

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes  No

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

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging Growth	<input type="checkbox"/>

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

The aggregate market value of the voting Common Stock held by non-affiliates of the registrant as of 6/30/2020 (based on the closing price as reported by the Nasdaq) was \$104,222,142.

There were 20,384,007 shares of the registrant's Common Stock outstanding as of March 26, 2021.

**DOCUMENTS INCORPORATED BY REFERENCE**

Information required by Part III of this Form 10-K, to the extent not set forth herein, is incorporated herein by reference to the registrant's definitive proxy statement for its 2021 annual meeting of shareholders, which is expected to be filed with the Securities and Exchange Commission on or before April 30, 2021.

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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements may appear throughout this Report on Form 10-K, including without limitation, the “Management’s Discussion and Analysis” section, and include statements that involve expectations, plans or intentions (such as those relating to future business, future results of operations or financial condition, new or planned features or services, or management strategies). You can identify these forward-looking statements by words such as “may,” “will,” “would,” “should,” “could,” “expect,” “anticipate,” “believe,” “estimate,” “intend,” “plan,” “potential,” “project,” “seek,” “strive,” “predict,” “continue,” “target,” and “estimate” and other similar expressions. These forward-looking statements involve risks and uncertainties and may include assumptions as to how we may perform in the future. Although we believe the expectations reflected in our forward-looking statements are reasonable, we cannot guarantee these expectations will actually be achieved. In addition, some forward-looking statements are based upon assumptions about future events that may not prove to be accurate. Therefore, our actual results may differ materially from those expressed or implied in our forward-looking statements.

You should understand that the following important factors, in addition to the Risk Factors set forth in Part I, Item 1A or elsewhere in this Report on Form 10-K, could cause our results to differ materially from those expressed in our forward-looking statements. These factors include, among others:

- our ability to retain and expand relationships with existing clients and attract and implement new clients;
- our dependency upon key personnel, retaining professional staffing resources and our reliance on subcontracted services and third-party providers;
- exposure to credit risk of our clients;
- our ability to remain competitive;
- our ability to adapt to rapid changes in e-commerce, outsourcing and the market for our services;
- our customer concentration of our business and existing client mix, their business volumes and the seasonality of their businesses;
- our dependability on fees generated by transaction volume and projects and our ability to manage related costs;
- increased or unexpected costs or unanticipated delays in connection with the performance of fixed-price contracts;
- whether we can manage growth and utilization of resources to generate more revenue;
- our ability to finalize pending client contracts and adhere to contract terms;
- our ability to maintain the security and privacy of our clients' confidential data;
- our ability to comply with data privacy regulations;
- foreign currency risks and other risks of operating in foreign countries;
- the unknown effects of possible system failures and rapid changes in technology;
- general global economic conditions and economic conditions in the countries in which we operate;
- our ability to maintain effective controls over financial reporting in the future;
- taxation on the sale of our products and provision of our services;
- the impact of new accounting standards and changes in existing accounting rules or the interpretations of those rules;
- our ability to borrow under current financing arrangements and maintain compliance with debt covenants and continued access to bank and commercial financing; and
- the impact on our operations as a result of acts of God, natural disasters, pandemics and/or endemics, including the ongoing COVID-19 pandemic and other catastrophic events beyond our control.

We do not intend, and undertake no obligation, to update any of our forward-looking statements after the date of this report to reflect actual results or future events or circumstances. There may be additional risks we do not currently view as material or that are not presently known or that are beyond our ability to control or predict. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.

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## **PART I**

### **Item 1. Business**

#### **General**

*Unless otherwise indicated, all references to “PFSweb,” “the Company,” “we,” “us” and “our” refer to PFSweb, Inc., a Delaware corporation and its subsidiaries; references to “Supplies Distributors” refer to our subsidiary, Supplies Distributors, Inc. and its subsidiaries.*

PFSweb, Inc., was incorporated in 1999 in the state of Delaware and maintains its corporate headquarters in Allen, Texas. All of our services are provided through our direct and indirect wholly-owned subsidiaries as noted above. In December 1999, PFSweb consummated an initial public offering of its common stock and became listed for trading on The NASDAQ Exchange under the symbol “PFSW.”

PFSweb is a Global Commerce Services Company. We manage the entire customer shopping experience for major branded manufacturers and retailers through two business segments, LiveArea Professional Services (“LiveArea”) and PFS Operations. LiveArea is a global customer experience and e-commerce agency, providing a comprehensive set of digital agency services to support, develop and improve business-to-business (“B2B”), business-to-consumer (“B2C”), and business-to-business-to-consumer (“B2B2C”) customer experiences both online and in-store. LiveArea services include: NXT Intelligence™, Service Design, Product Innovation, Connected Commerce, Performance Marketing, and Orchestrated Services. Through these services, we envision, build, and launch innovative products and omni-channel commerce solutions powered by data-driven insights to help our clients elevate their customer relationships. The PFS Operations segment provides services to support or improve the physical, post-click experience, such as logistics and fulfillment, customer care, and order-to-cash services including distributed order orchestration and payment services. We offer our services on an à la carte basis or as a complete end-to-end solution. Major brands and other companies turn to us to optimize their customer experiences and enhance their traditional and online business channels, creating commerce without compromise.

The services we offer are primarily organized into the following categories by segment:

#### ***LiveArea Professional Services***

- NXT Intelligence™
- Service Design
- Product Innovation
- Connected Commerce
- Performance Marketing
- Orchestrated Services

#### ***PFS Operations***

- Order to Cash (Order Management as a Service)
- Order Fulfillment
- Fulfillment-as-a-Service
- Customer Care

## GLOBAL COMMERCE SOLUTIONS

Together LiveArea Professional Services and PFS Operations serve as the “brand behind the brand” for companies seeking to increase efficiencies, drive customer engagement and growth, innovate and transform digitally, enter new markets or launch optimized sales channels. As a global customer experience and commerce agency and process outsourcer, we offer scalable and cost-effective solutions for brand manufacturers, online retailers, and distributors across a wide range of industry segments to serve business-to-consumer (B2C), business-to-business (B2B) and business-to-business-to-consumer (B2B2C) channels. We provide our clients with seamless and transparent solutions to support their business strategies, allowing them to focus on their core competencies. Leveraging our technology, expertise, and proven methodologies, we enable clients to develop and deploy new products and implement new business strategies or address new distribution channels rapidly and efficiently through our optimized solutions. Our clients engage us, both as a consulting partner to assist them in the design of a business solution, as well as a virtual and physical infrastructure partner to provide the mission-critical operations required to build and manage their business solution. Together, we not only help our clients define new ways of doing business, but also provide them the technology, physical infrastructure, and professional resources necessary to quickly implement their commerce objectives. We allow our clients to quickly and dramatically change how they “go-to-market” and service their customers.

Each client has a unique business model and unique strategic objectives that often require highly customized enterprise solutions. We support clients in a wide array of industries, including health; fragrance and beauty products; cosmetics; fashion apparel and accessories; luxury goods; consumer packaged goods (“CPG”); coins and collectibles; jewelry; home furnishings and housewares; consumer electronics; quick-serve restaurants (“QSR”); telecommunications; technology manufacturing; computer and office products; among others. Clients turn to LiveArea Professional Services and PFS Operations for help in addressing a variety of business needs that include strategic consulting, commerce experience design and development, product innovation, customer satisfaction and retention, time-definite logistics, vendor managed inventory and integration, supply chain compression, cost model realignments, transportation management, and international expansion, among others. We also act as a constructive agent of change, providing clients the ability to alter their current distribution model, establish direct relationships with end-customers, reduce the overall time and costs associated with existing distribution channel strategies, while improving customer experience via value-added distribution solutions such as gift-wrapping and product personalization. Our clients are seeking B2C and B2B and B2B2C solutions that will provide them with dynamic supply chain and multi-channel marketing efficiencies, while ultimately delivering a world-class, branded customer service experience.

Our value proposition is to serve as a seamless, well-integrated extension of our clients’ enterprises by delivering superior solutions that drive optimal customer experiences. On behalf of the brands we serve, we strive to increase and enhance sales and market growth, bolster customer satisfaction and customer retention and drive costs out of the business through operations and technology related efficiencies. As both a virtual and a physical infrastructure for our clients’ businesses, we embrace their brand values, strategic objectives and operational processes. By utilizing our services, our clients are able to:

*Quickly Capitalize on Market Opportunities.* We offer a collection of solutions focused on helping clients quickly assess opportunities that respond to the changing world of technology and assisting clients in harnessing innovation and brand experience through lean start-up methodologies. Our solutions empower clients to rapidly implement their supply chain and commerce strategies and take advantage of opportunities by utilizing our readily available advanced technology and physical infrastructure which facilitates a quick integration and implementation. The solution is designed to allow our clients to deliver consistent, quality service as transaction volumes grow and handle daily and seasonal peak periods. Our international locations allow our clients to expand the global reach of their products.

*Elevate the Customer Experience.* We enable our clients to provide their customers with a high-touch, positive buying experience, thereby maintaining and promoting brand loyalty. We create omni-channel commerce experiences designed to fit into and fuel a connected digital ecosystem. Our e-commerce solutions communicate seamlessly with stores and varying client applications. Through our use of advanced technology, we help our clients respond directly to customer inquiries by email, voice or data communication and assist them with online ordering and product information. We offer our clients a “world-class” level of service, including high-touch customer care service centers, detailed Customer Relationship Management (“CRM”) reporting, and exceptional order accuracy. We have significant experience in the development of e-commerce storefronts that allows us to recommend features and functions easily navigated and understood by our clients’ customers through guided selling designs. Our technology platform is designed to ensure high levels of reliability and fast response times for our clients’ customers. Because of our technology, our clients benefit from being able to offer the latest in traditional customer communication and auto-response technology to their customers. Using data, we create customer relationship-building insights that drive both strategy and action. Our fulfillment facilities are designed for efficient multi-brand operation with an emphasis on creating branded fulfillment experiences featuring custom

packaging, gift-wrapping, extensive personalization options and build-to-order and build-to-stock kitting. Our solutions provide enhanced brand recognition with streamlined and ease of use shopping, checkout, shipping, unboxing and return of goods processing.

*Minimize Investment and Improve Operating Efficiencies.* One of the most significant benefits outsourcing provides is the ability to transform fixed costs into variable costs. By eliminating the need to invest in a fixed capital infrastructure, our clients' costs typically become more directly correlated with volume increases or declines. Further, as volume increases drive the demand for greater infrastructure or capacity, we are able to quickly deploy additional resources. We provide services to multiple clients, which enables us to offer our clients economies of scale and resulting cost efficiencies that they may not have been able to obtain on their own. Additionally, because of the large number of daily transactions we process, we have been able to justify investments in levels of automation, security surveillance, quality control processes, and transportation carrier interfaces that are typically outside the scale of investment that our clients might be able to cost-justify on their own. We engage our Service Design capabilities to help brands evolve and improve how they service their clients with a digital advantage through our services. These additional capabilities can provide our clients the benefits of enhanced operating performance and efficiency and expanded customer service options.

*Access a Sophisticated Technology Ecosystem.* We provide our clients with access to a technology ecosystem featuring best-of-breed e-commerce technologies together in a single, integrated, Payment Card Industry ("PCI") certified order to cash offering. Powered by leading enterprise-class software solutions, our order to cash platform is seamlessly integrated into a variety of e-commerce platforms and supporting technology components and services to provide an end-to-end e-commerce solution. Built to accelerate the implementation process, the technology ecosystem allows for flexible integrations with other technology providers and client systems.

Our Technology Ecosystem also extends beyond the digital world and into physical commerce channels. Brands and retailers today require flexible technology to control customer shopping experiences regardless of where they shop. As a global commerce services company, we offer unbiased evaluation of new platforms and emerging technologies to help brands choose the best option for their businesses. Deploying ship from store, in-store pick-up, pop-up distribution centers, or mobile point of sale capabilities are just a few examples of how we can enable brands to create a dynamic and unique omni-channel shopping experience.

Our highest value proposition is achieved when our clients engage our full end-to-end suite of services from both LiveArea Professional Services and PFS Operations. However, we provide our clients with the freedom to customize their solution by selecting only certain services from our offering in an à la carte fashion. We believe this flexibility and willingness to create a customized solution for each client differentiates us from our competition. We also believe that bringing our deep understanding of end-to-end engagements to clients who are only using a portion of our offering is a key differentiator and brings significant value to our solutions and our clients.

## **LiveArea Professional Services**

Through LiveArea Professional Services, we bring together a comprehensive portfolio of e-commerce-focused services fusing creativity, strategy, and technology. Our service areas include NXT Intelligence™, Service Design, Product Innovation, Connected Commerce, Performance Marketing, and Orchestrated Services. Through our services, we bring together exceptional e-commerce technology while building and launching innovative products and services for clients both online and in-store. From brand strategy and digital experiences to the day-to-day mechanics of digital marketing services, we help brands stand apart from competitors, connect with customers and drive revenue. Our end-to-end, omnichannel expertise supports a holistic marketing strategy. When paired with our other services areas and disciplines, we provide a full suite of services that span strategy, creative, experience design, technology development and integration, project management, and quality assurance.

We offer an array of services that help retailers meet consumer expectations across the e-commerce lifecycle, leveraging digital tools within various applications to enhance our client's end consumer overall experience.

### ***NXT Intelligence*™**

NXT Intelligence™ is a collection of purpose-built solutions focused on helping clients rapidly assess emerging opportunities across three primary areas: Technology, innovation, and brand experience. As a technology-agnostic agency, we offer unbiased evaluation of new platforms and emerging technologies to help clients choose the best options for their businesses. Our focus on design thinking and lean start-up methodologies empower clients to explore emerging opportunities without significant upfront investments.

### ***Service Design***

Service Design is a business transformation service helping clients create efficiency and identify new revenue streams through the analysis and re-imagining of their services, customer touchpoints, technology, and business processes. We help clients look at their business not as a series of divisions and products, but as a cohesive collection of services they offer customers. We offer a more holistic way to evaluate and solve problems at the customer experience level.

### ***Product Innovation***

Our Product Innovation service helps clients rapidly invent, prototype, and test innovative new ideas for products and businesses. Through a series of workshops, we team with clients to invent, identify, generate, and develop customer value proposition opportunities for their business. We examine where customer value overlaps with potential business value to arrive at a shared value proposition that underpins the experience and design of the client's initial product.

### ***Connected Commerce***

Through our Connected Commerce service, we help clients transform their business and customer relationships by creating seamless commerce experiences online and in-store and other environments, such as pop ups. The service is inclusive of e-commerce strategy, consulting services, and technology services. Our approach features four hybrid-agile phases: Rapid start; Design and Build; Test and Launch; and Optimize. The e-commerce solutions adhere to a proven methodology to deliver quality implementations to meet client branded requirements in the industry based on our clients' custom solutions.

As a platform-agnostic provider, we have dedicated commerce technology practices specializing in all of the leading enterprise platforms. We employ a highly qualified team of solutions architects, web developers, project managers, and quality assurance ("QA") specialists.

### ***Performance Marketing***

Traditional marketing is difficult to track and measure, so marketers have difficulties understanding their return on investment. LiveArea Performance Marketing includes a comprehensive set of marketing services that allows brands to ensure they are truly paying for results. Our tools and approach allow us to tie each dollar spent on customer experience and marketing to its effect on the customer's journey. This allows us to optimize the journey – from first exposure to client brands, through first purchase, loyalty, and beyond.

We offer a comprehensive set of Performance Marketing services, including: Search Engine Optimization (SEO), where we help clients increase the quality and quantity of organic website traffic and increase brand exposure through non-paid search engine results; Data Analytics where through data capture and strategic analysis, we enable our clients to act on customer insights mined for maximum return; Conversion Rate Optimization (CRO) where we focus on improving client conversion rates; Digital Marketing where we enhance marketing performance, creating a cohesive approach to marketing across web, social and other channels; Paid Media where we build holistic programs that include paid search, social, display, and native and affiliate marketing channels to put our clients where their target consumers shop and buy; and with Email Marketing where we help clients create custom, relevant journeys and messaging that help brands nurture and retain customers.

### ***Orchestrated Services***

LiveArea assists clients in outsourcing the responsibility of maintaining their core technology systems to improve operations, make smarter, safer decisions, and reduce expenses. LiveArea Orchestrated Services helps clients evaluate the right digital transformation strategies, mitigate workloads, manage infrastructure and backup, and secure data and applications. Our orchestrated services team provides real-time management and monitoring to ensure our clients' sites operate at peak performance and provides solutions support for optimal issue management. Our automation tools facilitate fast, accurate code deployment - whether applying a software patch or launching a new feature.

### ***PFS Operations***

Through the PFS Operations business segment, we provide the operational activities required and expected of the world's leading brands. Our solutions support B2C, B2B, and retail sales channels. We have DTC and B2B experience in customizing solutions to meet the unique nuances of our clients' internal finance, customer care, supply chain, and omni-channel operations. With approximately 1.6 million square feet of leased distribution space and approximately 1,100+ contact center seats across two continents, we have the global infrastructure to meet the operational needs of our e-commerce and traditional B2B clients.



We focus on three core actions: to deliver, to communicate, and to fulfill the promise behind each brand we support.

The majority of our clients are the merchants of record for the orders we process through our infrastructure on their behalf. For these clients, we do not own the inventory or the resulting accounts receivable but provide commerce solutions and other services for these client-owned assets.

For some of our clients, we are the merchant of record for the orders we process through our infrastructure. Depending on the terms under these arrangements, we record either product revenue or service fee revenue, may own the accounts receivable and inventory and we may be compensated for all or a portion of our services through the resulting profit margin. In some of these client relationships, we purchase the inventory as the product is delivered to our facility. In other of these client relationships, the client retains ownership of inventory in our facility and we purchase the inventory immediately prior to each individual customer sales transaction. In all of these cases, we seek inventory financing from our clients in the form of extended terms, working capital programs or marketing funds to help offset the working capital requirements that follow accounts receivable and inventory ownership.

### ***Order to Cash (Order Management as a Service)***

Our order to cash service provides our clients with distributed order orchestration and payment processing. Our order to cash service features an Oracle-based, custom, scalable Distributed Order Management (“DOM”) technology platform built for B2C and B2B and order processing with a variety of fully-integrated B2C and B2B payment processing and fraud management platforms and technologies. Our order to cash service provides interfaces that allow for real-time information retrieval, including information on inventory, sales orders, shipments, delivery, purchase orders, warehouse receipts, customer history, accounts receivable and credit lines. These solutions are seamlessly integrated with our customer contact centers, allowing for the processing of orders through shopping cart, phone, fax, mail, email, live chat and other order receipt methods. As the information backbone for our total supply chain solution, our order to cash service can be used on a stand-alone basis or in conjunction with our other business infrastructure offerings, including contact center or order fulfillment services. In addition, for the B2B market, our order to cash platform provides a variety of order receipt methods that facilitate commerce within various stages of the supply chain. Our service provides the ability for both our clients and their customers to track the status of orders at any time. Our services are transparent to our clients’ customers and are seamlessly integrated with our clients’ internal system platforms and websites. By synchronizing these activities, we can capture and provide critical customer information, including:

- Statistical measurements critical to creating a quality customer experience, containing real-time order status, order exceptions, back order tracking, allocation of product based on timing of online purchase and business rules, the ratio of customer inquiries to purchases, average order sizes and order response time;
- B2B supply chain management information critical to evaluating inventory positioning, for the purpose of improving inventory turns, and assessing product flow-through and end-user demand;
- Reverse logistics information, including customer response and reason for the return or rotation of product and desired customer action; and
- Detailed marketing information about what was sold and to whom it was sold, by location and preference

*Technology Collaboration.* We have created a suite of technology services that enable buyers and suppliers to fully automate their business transactions within their supply chain using our order management interfaces. Our collaboration technologies operate in an open systems environment and feature the use of industry-standard Extensible Markup Language (“XML”) and Service-Oriented Architecture (“SOA”) web services, enabling customized e-commerce solutions with minimal changes to a client’s systems or our systems. The result is a faster implementation process. We also support information exchange methods, such as Applicability Statement 2 (“AS2”), Secure File Transfer Protocol (“SFTP”), Electronic Data Interchange (“EDI”), Message Queue Series (“MQ Series”), Application Link Enabling (“ALE”), and Representational State Transfer / Simple Object Access Protocol (“REST/SOAP”) over Hyper Text Transfer Protocol Secure (“HTTPS”).

*Information Management.* We have the ability to communicate with and transfer information to and from our clients through a wide variety of technology services, including real-time web service enabled data interfaces, file transfer methods and electronic data interchange. Our distributed order orchestration systems are designed to capture, store and electronically forward to our clients critical information regarding customer inquiries and orders, product shipments, inventory status (for example, levels of inventory on hand, on backorder, on purchase order and inventory due dates to our warehouse), product returns and other information. Our clients are able to utilize inventory and order information for use in analyzing sales and marketing trends and introducing new products. We also offer customized reports and data analyses based upon specific client needs to assist them in their budgeting.

*Payments.* Protecting our clients' brand with secure payment processing and fraud management services is critical to a successful operation. We also provide flexible global payment options as well as gift cards, B2B invoicing and VAT services.

Our payment services are divided into two major financial management areas: 1) billing, credit, collection and cash application services for B2B clients and 2) fraud review, chargeback management and processing and settlement of credit card services for B2C clients.

*Business-to-Business Financial Management.* For B2B clients, we offer full-service accounts receivable management and collection capabilities, including the ability to generate customized invoices in our clients' names. We assist clients in reducing accounts receivable and days sales outstanding, while minimizing costs associated with maintaining an in-house collections staff. We offer electronic credit services in the format of EDI and XML communications direct from our clients to their vendors, suppliers and retailers.

*Direct-to-Consumer Financial Management.* For B2C clients, we offer secure credit card processing related services for orders made via a client web site or through our customer contact center. We offer manual credit card order review as an additional level of fraud protection. We also calculate sales taxes, goods and services taxes or value added taxes, if applicable, for numerous taxing authorities and on a variety of products. Using third-party leading-edge fraud protection services and risk management systems, we can offer high levels of security and reduce the level of risk for client transactions.

### **Order Fulfillment**

We design advanced distribution operations that streamline our clients' supply chain process and offer a flexible fulfillment model. Our fulfillment team understands the value of the delivery experience by specializing in creating branded solutions with gift-wrap, product personalization and other value-added services. Our distribution centers are located in the Memphis, Tennessee area, Dallas, Texas, Toronto, Canada, Southampton, U.K., and Liege, Belgium to provide centrally located fulfillment throughout North America and Europe.

*Advanced Distribution Facilities and Infrastructure.* An integral part of our solution is the warehousing and distribution of our clients' inventory. We receive inventory in our distribution centers, verify shipment accuracy, unpack and audit packages (a process that includes spot-checking a percentage of the inventory to validate piece counts and check for damages that may have occurred during shipping, loading and unloading). Upon request, we inspect for other damages or defects, which may include checking fabric, stitching and zippers for soft goods, or 'testing' power-up capabilities for electronic items as well as product specifications. We generally stock for sale within one business day of unloading. We pick, pack and ship customer orders and can provide customized packaging, customized monogramming, personalized laser engraving, high volume shrink packaging, inserts and promotional literature for distribution with customer orders. For many clients, we provide gift-wrapping services including line level gifting, customized gift-wrapping paper, ribbon, gift-box and gift-messaging.

Our distribution facilities contain computerized sortation equipment, flexible mobile pick-to-light carts, powered material handling equipment and scanning and bar-coding systems. Our distribution facilities include several advanced technology enhancements, such as radio frequency technology in product receiving processing to ensure accuracy, as well as an automated package routing and a pick-to-light paperless order fulfillment system. Our advanced distribution systems provide us with the capability to warehouse an extensive number of stock keeping units ("SKUs"), ranging from large high-end electronics to small cosmetic compacts. Our facilities are flexibly configured to process B2B and DTC orders from the same central location.

In addition to our advanced distribution systems, our proprietary pick-to-light carts, stationary pick-to-light areas and conveyor system controls provide real time productivity reporting, thereby providing our management team with the tools to implement and manage to productivity standards. This combination of computer-controlled equipment provides the seamless integration of our pick-to-light systems and mass sortation capabilities. This unique combination of technologies ensures high order accuracy for each and every customer order.

We are able to take advantage of a variety of shipping and delivery options, which range from next day service to zone skipping, to optimize transportation costs. Our facilities and systems are equipped with multi-carrier functionality, allowing us to integrate with all leading package carriers and provide a comprehensive freight and transportation management offering.

We offer reverse logistics management services, including issuing return authorizations, return carrier shipping labels, receipt of product, crediting customer accounts and disposition of returned product. We also leverage strategic partnerships to provide our clients with access to distributed returns centers that collect, consolidate, report on and forward returned product to our central facilities allowing us to accelerate credits to our clients' customers, reduce freight costs for our client, improve customer service and reduce complexity and cost in our facilities from handling inbound returns.

*Facility Operations and Management.* Our facilities management service offering includes distribution facility design and optimization, business process reengineering and ongoing staffing and management. Our expertise in supply chain management, logistics and customer-centric fulfillment operations can provide our clients with cost reductions, process improvements and technology-driven efficiencies.

*Kitting and Assembly Services.* Our expanded kitting and assembly services enable our clients to reduce the time and costs associated with managing multiple suppliers, warehousing hubs and light manufacturing partners. As a single source provider, we provide the advantage of convenience, accountability and speed. Our kitting and assembly services include light assembly, specialized kitting and supplier-consigned inventory hub either in our distribution facilities or co-located elsewhere. We also offer customized light manufacturing and supplier relationship management.

*Pop-Up Distribution Centers.* Leveraging our CloudPick<sup>SM</sup> solution, temporary fulfillment centers allow our clients' e-commerce fulfillment networks to flex during peak periods with all the benefits of regional distribution nodes, without the long-term capital costs. We can deploy full pick-pack-ship operations within weeks that run off a simple Wi-Fi network and our proprietary distributed order management technology. Deployed into any real estate space with Wi-Fi, this solution allows for temporary forward stock allocation to alleviate volume from the primary fulfillment center, shorten delivery times and lower shipping costs.

*Fulfillment-as-a-Service.* PFS has developed and deployed technology products that facilitate the omni-channel shopping experience. Our cloud-based RetailConnect<sup>SM</sup> Store Edition is designed to streamline the pick/pack/ship operation within a retail store. Our cloud-based solution allows retailers the ability to offer BOPIS (Buy Online, Pick-up In Store) and BOSFS (Buy Online Ship From Store) quickly and accurately, transforming a brick-and-mortar store into an efficient, omni-channel hub which optimizes inventory and improves customer satisfaction.

We work with clients to re-sequence certain supply chain activities to aid in an inventory postponement strategy. We can provide kitting and assembly services and build-to-stock thousands of units daily to stock in a Just-in-Time ("JIT") environment. This service, for example, can entail the procurement of packaging materials including retail boxes, foam inserts and anti-static bags. These raw material components may be shipped to us from domestic or overseas manufacturers, and we will build the finished SKUs to stock for the client. Also included is the custom configuration of high-end printers and servers. This strategy allows manufacturers to make a smaller investment in base unit inventory while meeting changing customer demand for highly customizable products.

Our standard capabilities include: build-to-order, build-to-stock, expedited orders, passive and active electrostatic discharge ("ESD") controls, product labeling, serial number generation, marking and/or capture, lot number generation, asset tagging, bill of materials ("BOM") processing, SKU-level pricing and billing, manufacturing and metrics reporting, first article approval processes and comprehensive quality controls.

Kitting and inventory hub services enable clients to collapse supply chains into the minimal steps necessary to prepare product for distribution to any channel, including wholesale, mass merchant retail or direct to consumer. Clients no longer have to employ multiple providers or require suppliers to consign multiple inventory caches for each channel. We offer our clients the opportunity to consolidate operations from a channel standpoint, as well as from a geographic perspective. Our integrated, global information systems and international locations support business needs worldwide.

### **Customer Care**

Our internal contact center operations are focused on providing essential services such as order entry, returns authorization, product inquiry and order tracking. These operations also include our iCommerce Agent ("iCA"), a customizable web-based application featuring powerful customer service tools for accessing all required customer information. Our unique multi-lingual capabilities are possible through our strategically placed locations in Texas, Belgium, U.K., and Canada, as well as partnerships delivering multi-lingual capability in Mexico. We have also deployed technology which allows for full customer care capabilities to be deployed for agents in a work from home ("WFH") capacity, which has greatly increased our access to skilled staff while reducing attrition.

*Customer Service Application.* Through our web enabled iCA application, our unique technology leverages the client's website investment by wrapping the Customer Service Application around the existing website. Using iCA, agents provide customer service functions, such as placing orders, checking order status, facilitating returns, initiating upsell and cross sell, managing escalations and gathering "voice of the customer" information to help our clients evolve with their customers' changing needs. iCA is fully integrated into the client's website, our data analytics platform, and our order processing system, allowing full visibility into customer history and customer trends. Through each of our customer touch-points, information can be analyzed and processed for current or future use in business evaluation product effectiveness and positioning, and supply chain planning.

Through this fully integrated system, we are able to provide a complete customer care solution in a contact center or on a license basis to our clients' owned or outsourced contact centers.

*Customer Assistance.* An important feature of evolving commerce is the ability for the customer to communicate with a live customer service representative. Our experience has been that many consumers tell us they visited a web location for information, but not all of those consumers chose to place their order online. Our contact center services utilize features that integrate voice, e-mail, standard mail and live chat communications to respond to and handle customer inquiries. Our customer care representatives answer various questions, acting as virtual representatives of our clients' organization, regarding order status, shipping, billing, returns and product information and availability as well as a variety of other questions. We utilize technology that allows us to route each customer contact automatically to the appropriate customer care representative who is individually trained in the clients' business and products.

Our contact centers are flexibly designed so that our customer care representatives can handle either several different clients and products in a shared agent environment, thereby creating economy of scale benefits for our clients, or through a highly customized dedicated agent support model that provides the ultimate customer experience and brand reinforcement.

*Quality Monitoring.* Quality is essential in our client solutions. As representatives of our clients, our customer care representatives must adhere to the unique quality standards of each client for each contact type. We continually monitor the quality of our customer care representatives against each client quality standard and use the results to provide agent-level feedback to continually improve the customer care experience. Clients may participate in the quality process by remotely listening to calls, assisting in the grading of recorded calls and providing ongoing direction to improve quality standards through our calibration process.

*Customer Self-Help.* With the need for efficiency and cost optimization for many of our clients, we have integrated interactive voice response ("IVR") as another option for customer contacts. IVR creates an "electronic workforce" with virtual agents that can assist customers with vital information at any time of the day or night. IVR allows for our clients' customers to deal interactively with our system to handle basic customer inquiries, such as account balance, order status, shipment status and customer satisfaction surveys. The inclusion of IVR in our service offering allows us to offer a cost effective way to handle high volume, low complexity calls.

## **INDUSTRY INFORMATION AND COMPETITIVE LANDSCAPE**

### **Industry Overview**

Business activities in the public and private sectors continue to operate in an environment of rapid technological advancement, increasing competition and continuous pressure to decrease costs by improving operating and supply chain efficiency. We currently see the following trends within the industry:

- Manufacturers strive to restructure their supply chains to maximize efficiency and reduce costs in both B2B and B2C markets, and to create a variable-cost supply chain able to support the multiple, unique needs of each of their initiatives, including traditional retail and e-commerce.
- Companies in a variety of industries seek outsourcing as a method to address one or more business functions that are not within their core business competencies, to reduce operating costs or to improve the speed or cost of implementation.
- Retailers, both traditional and e-commerce only, partner with providers that offer them the most flexibility both short and long-term. The end-to-end model is a viable option for brands that are growing their e-commerce channel, or for large wholesale corporations that do not have the infrastructure to handle B2C transactions. However, many companies today seek to diversify their e-commerce operations across in-house capabilities and outsourced components on an a la carte basis.
- The "seamless customer experience" is a major industry trend that retailers and brand manufacturers are embracing to differentiate and remain relevant to a more sophisticated consumer. As consumers desire a shopping experience that blends sales channels, the integration and flexibility of front and back-end systems and operations becomes more critical to retailers and manufacturers.
- As a result of the COVID-19 pandemic, there has been a significant increase in e-commerce growth. Manufacturing and retailers are focused on driving improvements in their online presence through incremental

investments in their website presence and infrastructure to support evolving consumer buying patterns and requirements.

### **Supply Chain Management Trend**

As companies maintain focus on improving their businesses and balance sheet financial ratios, significant efforts and investments continue to be made in identifying ways to maximize supply chain efficiency and extend supply chain processes. Working capital financing, vendor managed inventory, supply chain visibility software solutions, distribution channel skipping, direct-to-consumer e-commerce sales initiatives and complex upstream supply chain collaborative technology are products that manufacturers seek to help them achieve greater supply chain efficiency.

A key business challenge facing many manufacturers and retailers as they evaluate their supply chain efficiency is determining how the trend toward increased omni-channel business activity will impact their traditional B2C commerce business models. Ship-from-store, pick-up-in-store, return-to-store and other omni-channel capabilities are becoming increasingly important processes to accommodate. We believe manufacturers will look to outsource their non-core competency functions to support this modified business model. We believe companies will continue to strategically plan for the impact that technology advancements will have on their traditional commerce business models and their existing technology and infrastructure capabilities. Additionally, B2B opportunities exist as companies look to leverage the technology and enhanced customer experience that currently exists within e-commerce channels.

Manufacturers, as buyers of materials, are also imposing new business practices and policies on their supplier partners to shift the normal supply chain costs and risks associated with inventory ownership away from their own balance sheets. Through techniques like Vendor Managed Inventory or Consigned Inventory Programs, manufacturers are asking their suppliers, as a part of the supplier selection process, to provide capabilities where the manufacturer need not own, or even possess, inventory prior to the exact moment that unit of inventory is required as a raw material component or for shipping to a customer. To be successful for all parties, business models such as these often require a sophisticated collection of technological capabilities that allow for complete integration and collaboration of the information technology environments of both the buyer and supplier. For example, for an inventory unit to arrive at the precise required moment in the manufacturing facility, it is necessary for the Manufacturing Resource Planning systems of the manufacturer to integrate with the CRM systems of the supplier. When hundreds of supplier partners are involved, this process can become quite complex and technologically challenging. Buyers and suppliers are seeking solutions that utilize XML based protocols and traditional EDI standards to ensure an open systems platform that promote easier technology integration in these collaborative solutions. In addition to these traditional integration and collaboration technology environments, we are observing the emergence of a variety of solutions utilizing blockchain technologies and we will continue to evaluate the appropriate time to include emerging technology solutions into our service offering.

### **Outsourcing Trend**

In response to growing competitive pressures and technological innovations, we believe many companies, both large and small, are focusing their critical resources on the core competencies of their business and utilizing e-commerce service providers to accelerate their business plans in a cost-effective manner and perform non-core business functions. Outsourcing can provide many key benefits, including the ability to:

- Enter new business markets or geographic areas rapidly;
- Increase flexibility to meet changing business conditions and demand for products and services;
- Enhance customer satisfaction and gain competitive advantage;
- Reduce capital and personnel investments and convert fixed investments to variable costs;
- Improve operating performance and efficiency; and
- Capitalize on skills, expertise and technology infrastructure that would otherwise be unavailable or expensive given the scale of the business.

Typically, many outsourcing service providers are focused on a single function, such as information technology, contact center management, credit card processing, warehousing or package delivery, etc. This focus creates several challenges for companies looking to outsource more than one of these functions, including the need to manage multiple outsourcing service providers, to share information with service providers and to integrate that information into their internal systems. Additionally, the delivery of these multiple services must be transparent to the customer so the client maintains brand recognition and customer

loyalty. Furthermore, traditional commerce outsourcers are frequently providers of domestic-only services versus international solutions. As a result, companies requiring global solutions must establish additional relationships with other outsourcing parties.

Another vital point for major brand name companies seeking to outsource is the protection of their brand. When looking for an outsourcing partner to provide infrastructure solutions, brand name companies must find a company that can provide the same quality performance and superior experience their customers expect from their brands. Working with an outsourcing partner requires finding a partner that can maintain the consistency of their brand image, which is one of the most valuable intangible assets that recognized brand name companies possess.

## **Competition**

We face competition from many different sources depending upon the type and range of services requested by a potential client. Many other companies offer one or more of the same services we provide on an individual basis. For operations services, our competitors include vertical outsourcers, which are companies that offer a single function solution. We compete with transportation logistics providers, known in the industry as 3PL's and 4PL's (third or fourth party logistics providers), who offer product management functions as an ancillary service to their primary transportation services. For professional services, we compete against Global Commerce Service Providers, and Specialists, who perform various services similar to our solution offerings. Additionally, we see competition from digital agencies providing creative, commerce strategy and system integration services. In many instances, PFSweb competes with the in-house operations of our potential clients. Occasionally, the operations departments of potential clients believe they can perform the same services we do, at similar quality levels and costs, while others are reluctant to outsource business functions that involve direct customer contact. We cannot be certain we will be able to compete successfully against these or other competitors in the future.

Although many of our competitors offer one or more of our services, we believe our primary competitive advantage is our ability to offer a full array of customized services, thereby eliminating any need for our clients to coordinate these services from many different providers. We believe we can differentiate ourselves by offering our clients a very broad range of e-commerce and business process services that address, in many cases, the entire value chain, from demand to delivery.

We also compete on the basis of many other important additional factors, including:

- vertical industry expertise;
- omni-channel strategy;
- design and implementation experience;
- operating performance and reliability;
- ease of implementation and integration;
- experience of the people required to successfully and efficiently design and implement solutions;
- experience operating similar solutions dynamically;
- scalable and secure technology experience across all major commerce packages;
- global reach; and
- price.

We believe we can compete favorably with respect to many of these factors. However, the market for our services is competitive and continually evolving, which will require PFSweb to continue to innovate and invest in both its LiveArea Professional Services and PFS Operations business units to be able to compete successfully against current and future competitors.

## **Competitive Landscape**

*Global Commerce Service Providers.* We compete with companies providing broad strategic solutions for digital transformation along with commerce implementation services including Accenture Digital, Capgemini/LCG, Cognizant, Deloitte Digital, HCL, IBM Global Business Services, Infosys, and Publicis Sapient.

*Commerce Specialist Service Providers.* We compete with companies providing e-commerce platform-specific services including Astound Commerce, BORN Group, diconium, Gorilla Group/Wunderman Commerce, Isobar and Optaros.

*Digital Agency and Digital Marketing Services.* We compete with a wide range of digital agency firms, including Isobar, Razorfish (Publicis), R/GA, Capgemini, and Wunderman Thompson.

*End-to-End Commerce.* In North America, we compete with full service commerce providers such as Blue Acorn, Branded Online, and Pitney Bowes. In the European market, we compete with companies such as Arvato, The Hut Group, and other geographically focused providers in Western Europe.

*Operations.* We compete with e-commerce focused order fulfillment providers such as Radial and GEODIS (formerly OHL), as well as, depending on the client's retail and/or supply chain strategy, Saddle Creek Logistics, James and James, FedEx Supply Chain, UPS Logistics, Kuehne + Nagel, and other "pure-play" fulfillment or contact center providers.

## **COMPANY INFORMATION**

### **Clients and Marketing**

Our target clients include traditional retailers, online retailers and leading technology and consumer goods brands looking to quickly and efficiently implement or enhance online and offline business initiatives and operations, adapt their digital strategies or introduce new products, programs or geographies, without the burden of modifying or expanding their technology, customer care, supply chain and logistics infrastructure. Our solutions are applicable to a multitude of industries and company types and we have provided solutions for such companies as:

Procter & Gamble (consumer packaged goods), L'Oréal USA (health & beauty), ASICS (sporting goods/apparel), Thrive Causemetics (health & beauty), Ricoh (printer supplies), Ralph Lauren (fashion), Xerox (printers and printer supplies), PANDORA (jewelry), Moleskine (stationery), Tommy Bahama (fashion), Anastasia Beverly Hills (health & beauty), The United States Mint (collectible coins), among many others.

We target potential clients through an extensive integrated marketing program comprised of a variety of direct marketing techniques, email marketing initiatives, trade event participation, search engine marketing, public relations, social media, thought leadership, and a sophisticated outbound tele-sales lead generation model. We have also developed a global business development methodology which allows us to effectively showcase our various commerce service solutions and products. We also pursue strategic marketing alliances with consulting firms, private equity firms, software manufacturers and other logistics providers to increase market awareness and generate referrals and customer leads.

Because of the highly complex nature of the solutions we provide, our clients demand significant competence and experience from a variety of different business disciplines during the sales cycle. As such, we often utilize a member of our executive team to lead the design and proposal development of each potential new client we choose to pursue. The executive is supported by a select group of highly experienced individuals from our professional services group with specific industry knowledge of, or experience with, the solutions development process. We employ a team of highly trained implementation managers whose responsibilities include the oversight and supervision of client projects and maintaining high levels of client satisfaction during the transition process between the various stages of the sales cycle and steady state operations.

### **Seasonality**

We have historically experienced seasonality due to our client mix and their increased business volumes which are highest in our fourth quarter which coincides with the retail peak season. We cannot predict the volume of sales of our clients or the impact of such seasonality of our clients or the sales they will implement during such peak season nor those of any future client business. We expect this seasonality to continue, or possibly increase in the future, which may cause fluctuations in our business operations and operating. Increased online buying due to the COVID-19 pandemic restrictions drove substantially increased fulfillment volume in the second quarter of 2020 with continued high growth in the third and fourth quarters of 2020 as well.

### **Concentration of Clients**

During 2020, one of our clients represented more than 10% of the Company's consolidated total net revenues. The client represented \$38.9 million, or 11%, of consolidated total revenues. The client utilizes the services offered by both the LiveArea and PFS Operations segments.

### **Human Capital Resources**

### Workforce Composition and Diversity, Equity and Inclusion

Our business is operated by a diverse and global workforce, with employees in the following key geographies as of December 31, 2020 (in thousands):

North America:	
United States	1,400
Canada	70
Total	1,470
Europe:	
United Kingdom	170
Belgium	150
Bulgaria	50
Total	370
Asia:	
India	290
Total Employees	2,130

We believe that providing a diverse workplace that promotes mutual respect and inclusion for all employees is critical to our business success and to driving innovation and growth. Since 2018, all US employees were trained on diversity and inclusion. In 2019, this training was expanded to our non-US employees and managers. In 2020, we launched an expanded Diversity & Inclusion effort and hired a firm to help develop a phased approach to increase diversity and ensure inclusion. As part of this process, the Company is engaging its workforce and seeking feedback from various groups within the Company, including, but not limited to, women, African Americans, and LGBTQ employees, to better determine if there are areas within the Company that warrant changes. We continue to work through the phased approach and believe this is an ongoing effort that will drive permanent change in our Company and our practices. As of December 31, 2020:

- globally, women make up approximately 49.5% of our workforce and hold approximately 32.2% of management roles.
- in the US, people of color represent approximately 69.2% of our workforce and hold approximately 44.6% of US management roles.

We are an equal opportunity employer and comply with all applicable federal, state and local laws, including but not limited to the applicable provisions of the Civil Rights Act of 1964. We prohibit and do not tolerate discrimination against our employees, applicants, or any protected group or class including in our hiring, workplace practices, promotions, compensation, benefits, and termination practices.

We have never suffered an interruption of business as a result of a labor dispute. We consider our relationship with our employees to be good. In the U.S., Canada and India, we are not a party to any collective bargaining agreements, and while our European subsidiaries are not a party to a collective-bargaining agreement, certain of them are required to comply with certain rules agreed upon by their employee Works Councils.

Our success in recruiting, hiring and training large numbers of skilled employees and obtaining large numbers of hourly employees and temporary staff during peak periods for distribution and call center operations is critical to our ability to provide high quality services.

### Health and Safety

Our frontline employees provide essential services to keep goods flowing to the people who need them. Their protection is important, and with the onset of COVID-19 pandemic in 2020, we began using a combination of protective measures and virtual communications to maintain a safe workplace environment including, but not limited to:

- Temperature checks at entry doors;
- Personal protective equipment (“PPE”) for all employees; and
- Mobile cleaning stations and access to hand sanitizers.



## Government Regulation

We are subject to federal, state, local and foreign consumer protection laws and data privacy laws, protecting our customers' personally identifiable information and other non-public information and regulations prohibiting unfair and deceptive trade practices to name a few. Moreover, there is a trend toward regulations requiring companies to provide consumers with greater information regarding, and greater control over, how their personal data is used, and requiring notification when unauthorized access to such data occurs. Furthermore, the growth and demand for online commerce has and may continue to result in more stringent consumer protection laws that impose additional compliance burdens and greater penalties on online companies.

These laws are increasing in number, enforcement, fines and other penalties. For example, many states and foreign countries currently require us to notify each of our clients or customers who are affected by any data security breach in which an unauthorized person, such as a computer hacker, who could obtain customer information. In addition, several jurisdictions, including foreign countries, have adopted privacy-related laws that restrict or prohibit unsolicited email promotions, commonly known as "spam," that impose significant monetary and other penalties for violations. Two such governmental regulations that have significant implications for our products and services are the General Data Protection Regulation ("GDPR") and the California Consumer Privacy Act ("CCPA") and in January 2023 the newly adopted California Privacy Rights Act ("CPRA") will come into effect. Please refer to Item 1A. Risk Factors in this Report, specifically, ***We must safeguard the security and privacy of our client's confidential data and remain in compliance with laws that govern such data and we may be liable for misappropriation of our client's and our clients' customers' personal information, including through cyber-attacks.***

In an effort to comply with these laws, internet service providers may increasingly block legitimate marketing emails. Compliance with these and any other applicable privacy and data security laws and regulations is a rigorous and a time-intensive process, and we may be required to put in place additional mechanisms to ensure compliance with the new data protection rules in the future which could result in substantial compliance costs and could interfere with the conduct of our business.

The U.K.'s exit from the European Union (referred to as "Brexit") may add cost and complexity to our operations and compliance efforts. Brexit has and may continue to contribute to volatility of currency exchange rates, including of the euro and British pound, issues with import and export controls, trade barriers, tariffs, and the movement of employees due to lack of enforceable trade agreements and uniform regulations. The U.K. is an important geography for us and we have structured our privacy and data protection compliance program based on the GDPR. As a result of Brexit, we will be required to implement alternative U.K. compliance measures and comply separately to the UK GDPR and Data Protection Act of 2018.

## Where to Find More Information

Our website address is [www.pfsweb.com](http://www.pfsweb.com), Information contained on, or accessible from, our website is not incorporated by reference into this annual report and should not be considered part of this annual report or any filing we make with the United States Securities and Exchange Commission, or SEC. We file with, or furnish to, the SEC all our periodic filings and reports, including annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and any amendments if any, to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934). All of our filings with the SEC are made available, free of charge, through the investor relations section of this website as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC or by mailing a written request to Investor Relations at PFSweb, Inc., 505 Millennium Drive, Allen, Texas 75013. Copies of any of our filings also can be obtained without charge from the SEC at [www.sec.gov](http://www.sec.gov).

## Item 1A. Risk Factors

*Our business, financial condition and operating results could be adversely affected by any or all of the following factors, in which event the trading price of our common stock could decline, and you could lose part or all of your investment.*

### Risks Related to Our Business and Operations

***We have identified a material weakness in our internal control over financial reporting which, if not timely remediated, may adversely affect the accuracy and reliability of our financial statements, and our reputation, business and the price of our common stock, as well as lead to a loss of investor confidence in us.***

We are required to maintain internal control over financial reporting and disclosure controls and procedures in order to provide reasonable assurance regarding the reliability of financial reporting and the preparation of our consolidated financial statements for external purposes in accordance with GAAP. In connection with management's assessment of our internal controls over financial reporting as of December 31, 2020, we determined that we had material weaknesses in our revenue process. We therefore concluded that, as of the end of the period covered by this report, our internal control over financial reporting and our disclosure controls and procedures were not effective. Until we fully remediate these weaknesses, it may be more difficult for us

to report results accurately and on time. While we are working to address our internal control over financial reporting, we cannot be certain that our efforts will be successful or that we will be able to maintain adequate controls over our financial processes and reporting in the future and we expect to incur additional audit fees related to incremental procedures performed and we may see a decline in our stock price due to reduced investor confidence. See “Part II—Item 9A. Controls and Procedures.”

Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur undetected, and it is possible that additional significant deficiencies or material weaknesses in our internal control over financial reporting may be identified in the future. Any failure of our internal controls could result in material misstatements in our consolidated financial statements, significant deficiencies, material weaknesses, costs, failure to timely meet our periodic reporting obligations, incremental audit fees and further erosion of investor confidence. It would also adversely affect the results of periodic management evaluations and could have a material adverse effect on our business, financial condition, results of operations or cash flow. If our internal controls continue to be deemed deficient in the future, our current external auditors could resign, and the process of retaining new auditors could limit our access to capital for an extended period of time.

***We are dependent on our key personnel, and if we are unable to employ skills and resources in balance with client demand and attract and retain skilled professionals in all our geographic locations, our business and our results of operations may be materially adversely affected.***

Our performance is highly dependent on the continued services of our officers and other professional personnel, the loss of any of whom could materially adversely affect our business.

In addition, we need to attract and retain other highly-skilled, technical and managerial personnel for whom there is intense competition. For example, if we are unable to hire or continually train our employees to keep pace with the rapid and continuing changes in technology and the markets we serve or changes in the types of services our clients are demanding, we may not be able to develop and deliver services and solutions to fulfill client demand. As we expand our services and solutions, we must also hire and retain an increasing number of professionals with different skills and expectations than those of the professionals we have historically hired and retained in various geographic locations, including North America, Europe and India. We currently rely heavily on our Indian office for developers, technology architects and skilled technology workers. Increasing wages, competition for skilled employees and the imposition of certain employee collective rights in India and Europe, may negatively impact our business and increase our costs. We cannot assure you we will be able to attract and retain the personnel necessary for the continuing support of and growth of our business. Our inability to attract and retain qualified technical and managerial personnel could materially adversely affect our ability to maintain and grow our business.

***Our business may suffer if we are unable to hire and retain sufficient temporary workers or if labor costs increase.***

We regularly hire a large number of part-time and seasonal workers, particularly during the fourth quarter holiday season and to meet temporary increases in client activity volume related to “flash sales” and other short-term marketing programs throughout our geographic locations. Any difficulty we may encounter in hiring such workers could result in significant increases in labor costs, or inability to support our clients’ businesses, which could have a material adverse effect on our business, financial condition and results of operations. We may also hire more full-time and part-time employees to mitigate the risk of the unavailability of temporary workers, and our failure to maintain an appropriate mix of labor personnel may result in higher costs. Increases in minimum wage requirements and other competition for labor, could also substantially increase our labor costs. Although we seek to preserve the contractual ability to pass through increases in labor costs to our clients, not all of our current contracts provide us with this protection, and we may enter into contracts in the future, which limit or prohibit our ability to pass through increases in labor costs to our clients.

***We are exposed to the credit risk of some of our clients and to credit exposures in weakened markets, which could result in material losses.***

A substantial portion of our sales are on an open credit basis. We monitor individual client financial viability in granting such open credit arrangements, seek to limit such open credit to amounts we believe the clients can pay, and maintain reserves we believe are adequate to cover exposure for doubtful accounts.

In the past, there have been bankruptcies amongst our client base, and certain of our clients’ businesses face financial challenges that put them at risk of future bankruptcies. Losses, resulting from client bankruptcies, have impacted our operations and any future bankruptcies could harm our business and have a material adverse effect on our operating results and financial condition. To the degree that the credit markets become difficult such that clients cannot maintain financing, our clients’ ability to pay could be adversely impacted, which in turn could have a material adverse impact on our business, operating results, and financial condition.

***We face competition from many sources that could adversely affect our business, and; growth in our clients' e-commerce business may make it more efficient for the client to perform some of our service offerings themselves.***

Many companies offer, on an individual basis, one or more of the same services we do, and we face competition from many different sources depending upon the type and range of services requested by a potential client. Our competitors include vertical outsourcers, which are companies that offer a single function, such as call centers, public warehouses or professional services firms such as system integrators and digital agencies. We compete against transportation logistics providers who offer product management functions as an ancillary service to their primary transportation services. We also compete against other infrastructure service providers, who perform many similar services as us. Many of these companies have greater capabilities than we do for the single or multiple functions they provide. In addition, we compete against other professional service firms that have substantial offshore operations with lower labor costs, which enable them to offer lower pricing to potential clients. In many instances, our competition is the in-house operations of potential clients themselves. The in-house operations of potential clients often believe they can perform the same services we do, while others are reluctant to outsource business functions that involve direct customer contact. We cannot be certain we will be able to compete successfully against these or other competitors in the future.

To remain competitive, we must continue to enhance and improve the responsiveness, functionality and features of our services and the underlying network infrastructure. If we are unable to adapt to changing market conditions, client requirements or emerging industry standards, our business could be adversely affected. The internet and e-commerce environments are characterized by rapid technological change, changes in user requirements and preferences, frequent new product and service introductions embodying new technologies and the emergence of new industry standards and practices that could render our technology and systems obsolete. Our success will depend, in part, on our ability to develop and license leading technologies to enhance our existing services and develop new services. We must continue to address the increasingly sophisticated and varied needs of our clients and respond to technological advances and emerging industry standards and practices on a cost-effective and timely basis. The development of proprietary technology involves significant technical and business risks. We may fail to develop new product offerings and technologies effectively or to adapt our proprietary technology and systems to client requirements or emerging industry standards which could have an adverse impact on our business and operations.

***The global coronavirus pandemic and any new strains of the virus could harm our business, results of operations, and financial condition.***

In March 2020, the World Health Organization declared COVID-19 a global pandemic. This pandemic and the related public health developments, including orders to shelter-in-place, travel restrictions and mandated business closures, have adversely affected businesses, workforces, organizations, customers, economies and financial markets globally, leading to an economic downturn and increased market volatility. While the COVID-19 pandemic has not had a material adverse impact on our operations to date, the extent and duration of the pandemic and any future resulting economic impact or adverse impacts are difficult to predict as the coronavirus continues to spread and cause disruptions to businesses, economies, and more.

Across our business, we have implemented several key measures to prioritize our employees' health and safety in response to the pandemic. We converted our entire contact center workforce to a work-from-home model, and in our distribution centers we are providing personal protective equipment for our teams, thermal scanning to check temperatures of our employees and mobile cleaning stations and have instituted enhanced sanitation criteria for daily and nightly cleaning and social distancing practices. Despite the pandemic, our fulfillment center teams continue to operate as closely to normal as possible while adhering to global health regulations and guidelines. In response to the growing demand for our services from clients, we have in fact added personnel in our distribution and contact centers. As a strategic partner, we are staying closely aligned with and working with our clients across both business segments as we help them respond and adapt to their evolving e-commerce needs during this time.

Currently, the Company is effectively managing operations during the pandemic in order to continue to provide services to its clients. It is possible that the measures taken by governments and the resulting economic impact may cause disruptions and severely impact our business as we continue to move through the fiscal year, including, but not limited to:

- causing one or more of our clients to reduce requested services, terminate services, delay payments, fail to pay us timely or even file for bankruptcy protection or shut down;
- adversely affecting new client wins in both of our business segments and the anticipated launch dates of, and demand for, new projects;
- reduced availability and productivity of our employees due to illness, quarantines, absenteeism, government actions, travel restrictions or other restrictions in connection with the pandemic;

- disruption to our or our client's supply chain and the procurement of products and ability to fulfill orders due to disruptions in our distribution centers;
- increased operational risks as a result of remote work arrangements, including the potential effects on internal controls, as well as cybersecurity risks and increased vulnerability to security breaches, information technology disruptions and other similar events;
- increased costs in response to the pandemic, including increased labor costs, procurement of equipment to move personnel into a work-from-home model, personal protective equipment and increased and enhanced cleaning services;
- continued volatility in market prices for our securities; and
- hampering our ability to access funds from financial institutions and the capital markets.

More specifically, our continued access to sources of liquidity during this pandemic also depends on multiple factors, including global economic conditions, the condition of global financial markets, the availability of sufficient amounts of financing and our operating performance. We currently have a revolving credit facility, but cannot guarantee the remaining availability will be enough to support our liquidity needs, should the pandemic last longer than anticipated and materially affect our cash flows. There is no guarantee that additional debt financing will be available in the future to fund our obligations, or that it will be available on commercially reasonable terms, in which case we may need to seek other sources of funding. In addition, the terms of future debt agreements could include more restrictive covenants, which could restrict our business operations.

It is not possible for us to predict the duration or magnitude of any adverse results of the pandemic and its effects on our business, results of operations or financial condition at this time, but such effects may be material and to the extent the duration of any of these conditions extends for a prolonged period of time, any adverse impact may be more severe. Such matters could impact future revenues and the Company's asset values, including goodwill and intangible assets. We expect to face difficulty predicting our internal financial forecasts as a result of the various continuing unknown factors resulting from the pandemic, including government actions or mandates, restrictions on or changes to clients' operations and business decisions and our supplier and vendor's ability to continue operations.

***Our operating results are materially impacted by our client concentration and mix and the seasonality of our clients' business.***

Our business is materially impacted by our client mix and the seasonality of their business as well as the concentration of our clients including our focus on certain primary vertical industries. Based upon our current client mix and their current projected business volumes, we anticipate our service fee revenue business activity will be at its highest in our fourth quarter. We are unable to predict how the seasonality of future clients' business may affect our quarterly revenue and whether the seasonality may change due to modifications to a client's business. As such, we believe results of operations for a quarterly period may not be indicative of the results for any other quarter or for the full year.

***Our service fee revenue and gross margin are dependent upon our clients' business and transaction volumes and our costs. A reduction in our clients' e-commerce business, our inability to grow our business or increase service fee revenue from new or existing clients, or our inability to manage expected costs could result in financial performance shortfalls and negatively impact our operating results.***

Our service fee revenue is primarily transaction and project based and fluctuates with the volume of transactions or level of sales of the products by our clients for whom we provide omni-channel services and the size and scope of projects for clients for whom we perform technology and agency services. If we are unable to retain existing clients or attract new clients, or if we dedicate significant resources to clients whose business does not generate revenues at projected levels or sufficient revenues, or whose products do not generate substantial client sales, our business and financial condition may be materially adversely affected.

When making a proposal for clients or managing engagements, whether on fixed-fee or time and materials basis, we rely on our estimates of costs and timing for delivering our services, which may be based on limited data and could be inaccurate. Further, our ability to estimate service fee revenue for future periods is substantially dependent upon our clients' and our own projections, the accuracy of which has been, and will continue to be, unpredictable. Therefore, our planning for client activity and targeted goals for service fee revenue and gross margin may be materially adversely affected by incomplete, delayed or inaccurate projections. Any increased or unexpected costs or unanticipated delays in connection with the performance of fixed-price contracts, including delays caused by factors outside of our control, could make these contracts less profitable or unprofitable and may affect the amount of revenue, profit and profit margin reported in any period.

In addition, most of our service agreements with our clients are non-exclusive and we cannot be assured that any of our clients will continue to use our services for any period of time. The loss of a significant amount of service fee revenue due to client terminations (including terminations related to client bankruptcies) or material reductions in the services provided to one or more clients could have a material adverse effect on our ability to cover our costs and thus on our profitability.

***Our business could be adversely affected if our clients are not satisfied with our services or our third party provider services or we may incorrectly design client solutions resulting in client attrition.***

Our success depends on our ability to handle a large number of transactions for many different clients in various product categories and to design client solutions that are effective and profitable. Our success also depends on our ability to satisfy our clients, both with respect to our professional services and operational e-commerce platform to meet our clients' business needs. These services may be performed by our own staff, or by a third party or a combination of the two. Our strategy is to work with third parties to increase the breadth of capability and depth of capacity for delivery of these services to our clients. If a client is not satisfied with the quality of work performed by us or a third party or with the type of services or solutions delivered, then we could incur additional costs to address the situation, the profitability of that work might be impaired, and the client's dissatisfaction with our services could damage our ability to obtain additional work from that client. Under the terms of several of our contracts with our service clients, we remain liable to provide such third party services and may be liable for the actions and omissions of such third party providers. Consequently, in the event our third party provider fails to provide the third party services in compliance with required services levels, or otherwise breaches its obligations, or discontinues its business, whether as the result of bankruptcy, insolvency or otherwise, we may be required to provide such services at a higher cost to us and may otherwise be liable for various costs and expenses related to such event. In addition, negative publicity related to our client relationships, regardless of its accuracy, may further damage our business and reputation by affecting our ability to compete for new business with current and prospective clients and otherwise could result in a material adverse effect upon our business and financial condition.

Further, as we experience volume increases in transactions due to increased sales and/or client growth, including from client marketing programs, such as "secret sales", "flash sales" or holiday related promotions, these often result in significant short-term spikes in transaction volumes. When this occurs, additional stress is placed upon our network hardware and software and our ability to efficiently manage our operations and available staffing resources, and our ability to efficiently manage a large number of spikes in transactions could be hampered. In addition, if we incorrectly design a client solution, we may incur additional costs to operate the solution, which may result in the client solution being unprofitable or otherwise not meeting our margin targets. If we are not able to maintain an appropriate level of operating performance, we may be in breach of our client contractual obligations, develop a negative reputation, and impair existing and prospective client relationships and our business could be materially adversely affected.

***We may experience fluctuations in the utilization of our underlying infrastructure as a result of shifts in our client concentration, attrition or growth, some of which we may not be able to control, which could adversely impact our operations and financial condition.***

Our clients expect us to provide omni-channel services at the appropriate size and scope of projects based on the client's needs, whether such needs are expanding or contracting. We must seek to maintain sufficient capacity in our fulfillment, call center and professional services operations and computer technology systems to support our projected existing and new client business activity, including seasonal volumes, and we currently plan on increasing capacity to support future projected growth. The fixed cost structure of many of these investments limits our flexibility to reduce our costs when excess capacity occurs. A reduction in our clients' business, including from financial distress or related bankruptcies, or our inability to grow our business or increase service fee revenue from new or existing clients could result in an underutilization in our invested assets. While certain of our building leases permit early termination in advance of their regular scheduled maturity date, these early terminations could require incremental termination related payments which reduce the potential benefit of this flexibility.

Similarly, salaries and payroll-related expenses are a significant component of our costs. Balancing our workforce levels against the demands for our services is difficult. We generally cannot reduce our labor costs as quickly as negative changes in revenue may occur. We may retain underutilized employees to maintain scalability to meet client demand. We must maintain our operating efficiency and utilization at an appropriate rate to achieve our desired level of profitability. If we are unable to achieve and maintain our target efficiency and utilization rates, our profitability could be adversely impacted. Further, increases in minimum wage requirements and other competitive increases in labor costs could put upward pressure on our costs and adversely affect our profitability if we are unable to recover these increased costs by increasing the prices for our services.

***Our business is subject to the risk associated with timing of contracts, adherence to contract terms and certain recovery of costs under the contract.***

The sales cycle for our services is variable, typically ranging between several months to up to a year from initial contact with the potential client to the signing of a contract. A potential client's decision to purchase our services is discretionary, involves a significant commitment of the client's resources and is influenced by intense internal and external pricing and operating comparisons. Consequently, the period between initial contact and the purchase of our services is often long and subject to delays associated with the lengthy approval and competitive evaluation processes that typically accompany significant operational decisions. Additionally, the time required to finalize pending contracts and to implement our systems and integrate a new client can range from several weeks to many months. Delays in signing and integrating new clients may affect our revenue and cause our operating results to vary widely.

Many of our client service agreements contain minimum service level requirements and impose financial penalties if we fail to meet such requirements. The imposition of a substantial amount of such penalties could have a material adverse effect on our business and operations. In the event we are unable to meet the service levels expected by the client, our relationship with the client could suffer and may result in financial penalties and/or the termination of the client contract.

Additionally, most of our client agreements provide a contract expiration date, but many also include an early termination clause permitting the client to terminate the contract for convenience prior to its stated expiration date or to reduce the scope of services or delay the commencement of services to be provided under the contract. Termination, reduction, or delay of our services under a contract could result from factors unrelated to our work product or the progress of the project, such as factors related to business or financial conditions of the client, changes in client strategies or the domestic or global economy generally. The bankruptcy, early termination, reduction or substantial delay of services of any significant client, or nonrenewal of any significant client contract, or the nonpayment of a material amount of our service fees by a significant client, if not offset by an increase in other revenue or cost reductions, could have a material adverse effect upon our business, results of operation and financial condition.

Further, we generally incur start-up costs in connection with the planning and implementation of business process solutions for our clients. Although we generally attempt to recover these costs from the client in the early stages of the client relationship, or upon contract termination if the client terminates without cause prior to full payment of these costs, there is a risk that the client contract may not fully cover the start-up costs or that the client will terminate the contract for cause and withhold payment of any unpaid start-up costs. To the extent start-up costs exceed the start-up fees received, certain excess costs will be expensed as incurred. Additionally, in connection with new client contracts, we may incur capital expenditures associated with assets whose primary use is related to the client solution. There is a risk that the contract may end before expected and we may not recover the full amount of our capital costs.

***We must safeguard the security and privacy of our clients' confidential data and remain in compliance with laws that govern such data and we may be liable for misappropriation of our clients' and our clients' customers' personal information, including through cyber-attacks.***

We are subject to U.S. and foreign laws relating to the collection, use, retention, security and transfer and processing of personally identifiable information. In the provisions of our services to our clients, we may be required to process personally identifiable information in compliance and adherence to these varying data protection laws. The interpretation and application of user data protection laws are in a state of flux, and may vary from country to country or state to state in the U.S. These laws are increasing in number, enforcement, fines and other penalties. In the event of a security breach, these laws may subject us to incident response, notice and remediation costs, as well as costs associated with any investigations that might arise from federal regulatory agencies and state attorney generals. Failure to safeguard data adequately, process data in accordance with such laws or to destroy data securely could subject us to regulatory investigations or enforcement actions under federal or state data security, unfair practices, or consumer protection laws. The scope and interpretation of these laws could change and the associated burdens and compliance costs could increase in the future. Two such governmental regulations that have significant implications for our products and services are the GDPR and the CCPA.

The GDPR went into effect in May 2018, implementing more stringent requirements in relation to the use of personal data relating to European Union individuals. Personal data includes any type of information that can identify a living individual, including name, identification number, email address, location, internet protocol addresses and cookie identifiers. Among other requirements, the GDPR mandates notice of and a lawful basis for data processing activities, data protection impact assessments, a right to "erasure" of personal data and data breach reporting.

In the United States, California adopted the CCPA, which became effective in January 2020. The CCPA establishes a privacy framework for covered businesses, including an expansive definition of personal information and data privacy rights for California residents. The CCPA includes a framework with potentially severe statutory damages and private rights of action. It still remains unclear how the CCPA will be interpreted by the Attorney General of California since the CCPA became effective.

but we have taken what we believe are appropriate measures to implement CCPA in our business activities, including establishing internal protocols and procedures as well as modifying our contracts accordingly. California has further adopted the CPRA, effective in January 2023, which amends and expands the CCPA as well as establishes a new enforcement agency dedicated to consumer privacy. We will likely see the continuing compliance impact of the new legislation and interpretations thereof and the evolving regulatory environment on our business activities with respect to the use and transfer of personal data. As we expand our operations, the CCPA, CPRA and evolving consumer protection regulation may significantly increase our compliance costs and potential liability.

Third parties are engaging in increased cyber-attacks against companies doing business on the internet and individuals are increasingly subjected to identity and credit card theft on the internet. We and our third-party service providers may not have the resources or technical sophistication to anticipate or prevent all such cyber-attacks. Moreover, techniques used to obtain unauthorized access to systems change frequently and may not be known until launched against us or our third-party service providers. If third parties or unauthorized employees are able to penetrate our network security or otherwise misappropriate our clients' or our clients' customers' personal information or credit card information, or if we give third parties or our employees improper access to clients' personal information or credit card information, we could be subject to liability. This liability could include claims for unauthorized purchases with credit card information, impersonation or other similar fraud claims, as well as claims for other misuses or inadvertent disclosure of personal information, including unauthorized marketing purposes or selling of data. In such circumstances, we also could be liable for failing to provide timely notice of a data security breach affecting certain types of personal information.

We rely on encryption and authentication technology to provide the security and authentication necessary to effect secure transmission of sensitive client information such as customer credit card numbers. Advances in computer capabilities, new discoveries in the field of cryptography or other events or developments may result in a compromise or breach of the measures that we use to protect client transaction data. If any such compromise of security were to occur, it could subject us to liability, damage our reputation and diminish the value of our brand-name. A party who is able to circumvent the security measures could misappropriate proprietary information or cause interruptions in operations. We may be required to expend significant capital and other resources to protect against such security breaches or to alleviate problems caused by such breaches. Our security measures are designed to prevent security breaches, but our failure to prevent such security breaches could subject us to liability, damage our reputation and diminish the value of our brand-name.

Compliance with these and any other applicable privacy and data security laws and regulations is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms ensuring compliance with the new data protection rules. If we fail to comply with any such laws or regulations, or in the event of a significant data breach, we may face significant fines, penalties and costs that could adversely affect our business, financial condition and results of operations.

***A breach of our e-commerce security measures could reduce demand for our services. Credit card fraud and other fraud could adversely affect our business.***

A requirement of the continued growth of e-commerce is the secure transmission of confidential information over public networks. A party who is able to circumvent our security measures could misappropriate proprietary information or interrupt our operations. Any compromise or elimination of our security could reduce demand for our services.

We may be required to expend significant capital and other resources to protect against security breaches or to address any problem they may cause. Because our activities involve the storage and transmission of proprietary information, such as credit card numbers, security breaches could damage our reputation, cause us to lose clients, impact our ability to attract new clients and we could be exposed to litigation and possible liability. Our security measures may not prevent security breaches, and failure to prevent security breaches may disrupt our operations. The failure to adequately control fraudulent transactions on either our behalf or our client's behalf could increase our expenses and expose us to reputational damage which could adversely affect our business.

***We have made, and may make in the future, strategic acquisitions and divestitures that may involve significant risks and uncertainties. We may not realize the anticipated benefits of past or future acquisitions and integration of these acquisitions may disrupt our business and divert management attention. Likewise, any future divestitures may be unsuccessful and negatively impact our business.***

From time to time, we may seek opportunities to maximize efficiency and value through various transactions including the sale of assets or businesses, or the pursuit of acquisitions of complementary assets or businesses. These transactions are subject to inherent risks and could:

- cause us to incur significant expenses, increase our operating costs, or potentially harm our business;

- divert management's attention away from other operational matters;
- result in unanticipated costs, assumption of liabilities or exposure to unforeseen liabilities of acquired businesses;
- difficulties in integrating the operations, assets and employees of the acquired business;
- the potential impact of the announcement or consummation of a proposed transaction on the market value of our common stock or relationships with third parties;
- reductions in cash balances and/or increases in debt obligations to finance activities associated with a transaction, including future payments under earn-outs and other contingent payments, which reduce the availability of cash flow for general corporate or other purposes or impact our financial results;
- difficulties in maintaining an effective internal control environment over an acquired business;
- risks of entering markets in which we have limited prior experience;
- decreased earnings, revenues or cash flow resulting from dispositions; and
- increases in our expenses and working capital requirements.

The process of integrating an acquired business may involve unforeseen costs and delays or other operational, technical and financial difficulties that may require a disproportionate amount of management attention and financial and other resources. Our failure to achieve consolidation savings, to incorporate the acquired businesses and assets into our existing operations successfully or to minimize any unforeseen operational difficulties could have a material adverse effect on our financial condition and results of operations.

Likewise, divestitures of assets or businesses involves a number of risks, including the diversion of management's attention, significant costs and expenses, goodwill and other intangible asset impairment charges, the loss of customer relationships and cash flow, adverse impact on any remaining business and our stock price, and disruption of operations in the affected business. Failure to timely complete or consummate a divestiture may negatively affect valuation of the affected business or result in restructuring charges. In the event an unsuccessful acquisition or divestiture, our competitive position, revenues, results of operations and financial condition could be adversely affected.

***Our financial results may be adversely affected by fluctuations in the foreign currency exchange markets.***

The revenues and expenses of our international operations generally are denominated in local currencies. Accordingly, we are subject to exchange rate fluctuations between such local currencies and the U.S. dollar. These exchange rate fluctuations subject us to currency translation risk with respect to the reported results of our international operations. Significant strengthening or weakening of the U.S. dollar against currencies like the Canadian Dollar, British Pound and the Euro may materially impact our revenue and profits. As we continue to expand our presence in India, we will have increased exposure to fluctuations between the Indian Rupee and the U.S. dollar. In addition, we have transactions with clients, as well as inter-company transactions between our subsidiaries, that cross currencies and expose us to foreign currency gains and losses. These types of events are difficult to predict and may recur. There can be no assurance that we will be able to reduce the currency risks associated with our international operations. We seek to manage our exposure to changes in foreign currency exchange rates through our normal operating and financing activities and, if deemed appropriate, we may use derivative financial instruments. There is no assurance that we will be successful in managing or controlling foreign currency risks.

***Our business is susceptible to risks associated with international operations.***

Outside of the United States, we currently maintain distribution facilities, call centers, technology centers, administrative offices and/or have sales personnel in Belgium, Canada, India, Bulgaria, and the U.K., and we currently intend to expand our international operations. We cannot assure you we will be successful in expanding in these or any additional international markets. In addition, we may face competition from companies that may have more experience with operations in these countries or with international operations generally. We may also face difficulties integrating new facilities in different countries into our existing operations, as well as integrating employees that we hire in different countries into our existing corporate culture. In addition to the uncertainty regarding our ability to generate revenue or profits from foreign operations and expand our international presence, there are risks inherent in doing business internationally that we have not generally faced in our U.S. operations, including:



- lack of familiarity with, and resulting risk of breach of, and/or unanticipated additional cost of compliance with, foreign laws and regulations governing privacy, data security, data transfer, employment, taxes, tariffs, trade restrictions, transfer pricing and other matters;
- changes in local tax and customs duty laws or changes in the enforcement, application or interpretation of such laws;
- potential for violations of anti-corruption laws and regulations, such as those related to bribery and fraud;
- fluctuations in currency exchange rates;
- difficulties and expenses associated with localizing our services and operations to local markets, including language and cultural differences;
- difficulties in staffing and managing international operations, including complex and costly hiring, disciplinary and termination requirements;
- the impact upon our clients, international firms and global economies arising from Brexit and surrounding uncertainty, and the political, economic and commercial responses related to such events, including related instability in global financial and foreign exchange markets, including volatility in the value of the British pound and European euro, legal uncertainty and potentially divergent national laws and regulations and the absence of established trade agreements between the U.K. and other E.U. countries which could result in increased or decreased sales or revenues or an increase in costs of operations due to tariffs or other factors;
- the complexities of foreign value-added taxes and restrictions on the repatriation of earnings;
- reduced or varied protection for intellectual property rights in some countries;
- political, social and economic instability abroad, terrorist attacks and security concerns; and
- increased accounting and reporting burdens and complexities.

Additionally, the U.K. is one of our larger markets in Europe. We currently ship products for U.K. clients from our continental Europe location, as well as our new facility in Southampton, U.K. We anticipate greater restrictions on imports and exports between the U.K. and the E.U. and increased regulatory complexity as a result of Brexit. The uncertainty regarding the final terms of trade agreements and the application and interpretation of the UK GDPR due to Brexit may adversely affect our international operations by, among other things, increasing our costs and reducing the volume of our client activities.

Further, operating in any international markets requires significant management attention and financial resources. We cannot be certain that the investments and additional resources required to establish and maintain operations in other countries will hold their value or produce desired levels of revenues or profitability. Any negative impact from our international business efforts could negatively impact our business, results of operations and financial condition as a whole.

***Our business and profitability could be adversely affected if the operations of one or more of our facilities were interrupted or shut down as the result of acts of God, natural disasters, pandemics and/or endemics and other catastrophic events beyond our control.***

Our operations are dependent upon our ability to protect our distribution facilities, client service centers, computer and telecommunications equipment and software systems against interruption, damage and failures. Our business operations are subject to serious disruptions, interruption and possible cessation of services by acts of God, natural disasters, fire, tornado, flood, power shortages, terrorism, strikes, pandemics and endemics (including the ongoing COVID-19 pandemic), equipment malfunctions, system failures and other events beyond our control. Although we maintain crisis management and disaster response plans, such events could make it difficult or impossible or substantially disrupt our ability for us to deliver our services to our clients, which may be due to (i) the inability of personnel to come to work to perform services, (ii) personnel being incapacitated to work, and/or (iii) third party vendors and suppliers inability to provide materials and/or services required for us to perform our services which could have a material adverse effect on our business, results of operations and financial condition. In addition, we could incur significantly higher costs during the time it takes for us to reopen or replace any one or more of our facilities, personnel, vendors and/ supplier services which may or may not be reimbursed by insurance.

Our clients' businesses may also be harmed from any system or equipment failures we experience as a result of the same acts of God, natural disasters, fire, tornado, flood, power shortages, terrorism, strikes, pandemics and endemics (including the

ongoing COVID-19 pandemic) and other events beyond our control. In that event, our relationship with these clients may be adversely affected, we may lose these clients, and our ability to attract new clients may be adversely affected and we could be exposed to liability.

***We or our clients may be a party to litigation involving our e-commerce intellectual property rights. If third parties claim we or our clients are infringing their intellectual property right under the indemnification obligations within our contracts with our clients and business partners, we could incur significant litigation costs and be required to pay damages, which may have a material adverse effect upon our business, results of operations and financial condition.***

Third parties have asserted, and may in the future assert, that our business or the technologies we use infringe on their intellectual property rights. As a result, we or our clients may be subject to intellectual property legal proceedings and claims in the ordinary course of business. We cannot predict whether third parties will assert claims of infringement in the future or whether any future claims will prevent us from offering popular products or services. If we or our clients are found to infringe, we may be required to pay monetary damages, which could include treble damages and attorneys' fees for any infringement that is found to be willful, and either be enjoined or required to pay ongoing royalties with respect to any technologies found to infringe. Further, as a result of infringement claims either against us or our clients, we may be required, or deem it advisable, to develop non-infringing technology, which could be costly and time consuming, or enter into costly royalty or licensing agreements. Such royalty or licensing agreements, if required, may be unavailable on terms that are acceptable, or at all. If a third party successfully asserts an infringement claim against us or our clients and we are enjoined or required to pay monetary damages or royalties or we are unable to develop suitable non-infringing alternatives or license the infringed or similar technology on reasonable terms on a timely basis, our business, results of operations and financial condition could be materially harmed.

Under our indemnification provisions in the contracts that we enter into with our clients and business partners, we are generally required to defend against claims arising out of our infringement of third-party intellectual property rights, breach of contractual obligations and/or unlawful or otherwise culpable conduct, including breach of data security. The indemnity obligations generally cover damages, costs and attorneys' fees arising out of such claims. In many instances, our indemnification obligations to our clients include the actions or omissions of our third-party service providers. Although we seek to limit our total liability under such provisions to either a portion of the value of the contract or a specified, agreed-upon amount, in some cases our total liability under such provisions is unlimited. Although in many cases our third party service providers indemnify us for their actions and omissions, such providers may dispute or be unable to satisfy their indemnification obligation to us. In addition, our indemnification obligation to our clients may be broader in scope, or may be subject to larger limitations of liability, than the indemnification obligation of our third party service providers to us. In most cases, the term of the indemnity provision is perpetual. If we are required to indemnify a claim in a material amount, or if a series of indemnification claims are in the aggregate a material amount, we may be required to expend significant resources to defend the claims, which may have a material adverse effect upon our business, results of operations and financial condition.

***We and our clients may be subject to existing, new or expanded imposition of sales tax in one or more jurisdictions, which could adversely affect our business.***

We collect sales or other similar taxes for shipments of our and our clients' goods in certain states and jurisdictions. One or more local, state or foreign jurisdictions may seek to impose sales tax collection obligations on us and other out-of-state companies, including our clients, that engage in online commerce, depending upon the nexus we or our clients may have with that jurisdiction and the product or services being performed. As a result of the U.S. Supreme Court's 2018 decision in *South Dakota v. Wayfair*, many states have enacted, and others may choose to enact in the future, new legislation and increase enforcement efforts of existing legislation requiring online retailers to collect and remit sales tax. If unexpected sales tax obligations are successfully imposed upon us or our clients by a state or other jurisdiction, we or our clients could be exposed to substantial tax liabilities for past sales and fines and penalties for failure to collect sales taxes and we or our clients could suffer decreased sales in that state or jurisdiction as the effective cost of purchasing goods from or through us increases for those residing in that state or jurisdiction. This imposition of sales tax may also be enforced on companies providing software as a service (SaaS), information services, data processing services, and maintenance, to name a few. As we provide such services, we may become subject to sales tax in each state where we provide services.

If there is increased legislative or enforcement action, e-commerce in general could decline as increased taxation of online sales could result in online shopping losing some of its current advantage over traditional retail models, which could diminish its appeal to consumers. A decrease in our clients' e-commerce sales could impact our revenue. In addition, the cost of implementing new and expanded sales tax impositions by multiple taxing authorities may adversely impact our and our clients' profitability.

***Determinations under government audits could negatively affect our business.***

We provide services to a U.S. government agency under a contract that provides the agency with the right to audit and review our performance under the contract, our pricing practices, our cost structure, and our compliance with applicable laws, regulations and standards. If a government audit determines that we are in breach of our contractual terms, or have engaged in improper or illegal activities, we may be subject to civil and criminal penalties and administrative sanctions, including termination of the contract, suspension of payments, or disqualification from continuing to do business, or bidding on new business, with this agency and other federal agencies.

#### **Risks related to our Financial Position and Capital Needs**

***We operate with significant levels of indebtedness and are required to comply with certain financial and non-financial covenants; and we have guaranteed certain indebtedness and obligations of our subsidiaries.***

As of December 31, 2020, our total credit facilities outstanding, including debt, finance lease obligations and our vendor accounts payable related to financing of Ricoh product inventory for a client, were approximately \$46.1 million. We cannot provide assurance that our credit facilities will be renewed by the lending parties. Additionally, these credit facilities include both financial and non-financial covenants, many of which also include cross-default provisions applicable to other agreements. Certain of these covenants also restrict our ability to transfer funds among our various subsidiaries, which may adversely affect the ability of our subsidiaries to operate their businesses or comply with their respective loan covenants. We cannot provide assurance that we will be able to maintain compliance with these covenants. A non-renewal, default under or acceleration of any of our credit facilities may have a material adverse impact upon our business and financial condition. We have guaranteed most of the indebtedness of our subsidiary Supplies Distributors. Furthermore, we are obligated to repay any over-advance made to Supplies Distributors by its lenders to the extent Supplies Distributors is unable to do so.

***Our business and future growth depend on our continued access to bank and commercial financing.***

Our business and future growth currently depend on our ability to access bank, vendor and commercial lines of credit, including a line of credit facility provided by various banks that provided for an aggregate of up to approximately \$60.0 million of financing as of December 31, 2020, with an accordion feature providing for a potential of additional \$20.0 million. This line of credit currently matures in November 2023 and is secured by substantially all our assets. Our ability to maintain, renew or replace our bank, vendor and commercial financing depends upon various factors, including the availability of bank loans and commercial credit in general, as well as our financial condition and prospects. Therefore, we cannot guarantee that these credit facilities will continue to be available beyond their current maturities on reasonable terms or at all. Our inability to maintain, renew or replace our credit facilities or find alternative financing could have a material adverse effect on our business, financial condition, operating results and cash flow.

***We anticipate incurring significant expenses in the foreseeable future, which may reduce our ability to achieve or maintain profitability.***

To reach our business growth objectives, we currently expect to increase our operating, sales and marketing expenses, as well as capital expenditures. To offset these expenses, we will need to generate additional profitable business. If our revenue declines or grows slower than either we anticipate or our clients' projections indicate, or if our operating, sales and marketing expenses exceed our expectations or cannot be reduced to an appropriate level, we may not generate sufficient revenue to be profitable or be able to sustain or increase profitability on a quarterly or annual basis in the future. Additionally, if our revenue declines or grows slower than either we anticipate or our clients' projections indicate, we may incur unnecessary or redundant costs and our operating results could be adversely affected.

***Our financial results may be negatively impacted by impairment in the carrying value of our goodwill.***

Goodwill represented approximately 20% of our total assets as of December 31, 2020. The carrying value of goodwill represents the fair value of an acquired business in excess of identifiable assets and liabilities as of the acquisition date. We are required to test goodwill for impairment annually and when factors or indicators become apparent that could reduce the fair value of any of our reporting units below its book value. Such factors requiring an interim test for impairment include financial performance indicators, such as negative or declining cash flows or a decline in actual or planned revenue or earnings, and a sustained decrease in share price. A significant downward revision in the fair value of one or more of our business units that causes the carrying value to exceed the fair value could cause goodwill to be considered impaired and could result in a non-cash impairment charge in our consolidated statement of operations.

***If our estimates relating to our critical accounting policies prove to be incorrect, our operating results could be adversely affected.***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions we believe to be reasonable under the circumstances, as provided in “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities and equity, and the amount of revenue and expenses that are not readily apparent from other sources. Significant assumptions and estimates used in preparing our consolidated financial statements include those related to revenue recognition, allowance for uncollectible accounts receivable, accounting for property, plant and equipment and definite-lived assets, stock-based compensation, income taxes and other contingencies. Our operating results may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our operating results to fall below the expectations of securities analysts and investors, resulting in a decline in the price of our Common Stock.

***We may experience additional costs and uncertainties from the LIBOR phase-out.***

The London Interbank Offered Rate (“LIBOR”) is commonly used as a benchmark for rates across a wide range of financial products and instruments, however, financial regulators are transitioning away from the use of LIBOR by the end of 2021. As a result, we anticipate certain risks associated with this transition, including market uncertainty and disruptions, particularly with our existing debt instruments and equipment financings. We are working to review and address the potential issues in our existing debt instruments and equipment financings for substitutions, as well as revisit our accounting policies.

***Our expenses could be adversely impacted by increases in healthcare costs.***

We provide healthcare benefits to our employees. Increased costs of providing such benefits, including potential impact from modifications to healthcare legislation and related regulations, could materially impact our future healthcare costs, which could adversely affect our results and cash flow.

**Risks Related to Our Stock**

***Institutional shareholders hold a significant amount of our common stock and these shareholders may have conflicts of interests with the interests of our other shareholders.***

As of December 31, 2020, our top three shareholders (including transcosmos, Inc., our largest shareholder) own or control approximately 35% of the voting power of our common stock. The interests of these shareholders may differ from our other shareholders in material respects. This concentration of voting power of our common stock may make it difficult for our other shareholders to approve or defeat matters that may be submitted for action by our shareholders, including the election of directors and amendments to our Certificate of Incorporation or Bylaws. This also may have the effect of deterring, delaying, or preventing a change in control, even when such a change in control could benefit our other shareholders. These shareholders may have the power to exert significant influence over our affairs in ways that may be adverse to the interests of our other shareholders.

***The market price of our common stock may be volatile. You may not be able to sell your shares at or above the price at which you purchased such shares.***

The trading price of our common stock may be subject to wide fluctuations in response to quarter-to-quarter fluctuations in operating results, announcements of material adverse events, general conditions in our industry or the public marketplace and other events or factors, including the thin trading of our common stock. In addition, stock markets have experienced extreme price and trading volume volatility in recent years. This volatility has had a substantial effect on the market prices of securities of many technology-related companies for reasons frequently unrelated to the operating performance of the specific companies. These broad market fluctuations may adversely affect the market price of our common stock. Further, our market price may be impacted by our inability to maintain or comply with the Nasdaq Stock Market LLC (“Nasdaq”) listing requirements, which could include reduction in our market price or delisting of our stock.

In addition, if our operating results differ from our announced guidance or the expectations of equity research analysts or investors, the price of our common stock could decrease significantly.

***Our certificate of incorporation, our bylaws, our shareholder rights plan and Delaware law make it difficult for a third party to acquire us, despite the possible benefit to our shareholders.***

Provisions of our certificate of incorporation, our bylaws, our shareholder rights plan and Delaware law could make it more difficult for a third party to acquire us, even if doing so would be beneficial to our shareholders. For example, our certificate

of incorporation permits our Board of Directors to issue one or more series of preferred stock, which may have rights and preferences superior to those of the common stock. The ability to issue preferred stock could have the effect of delaying or preventing a third party from acquiring us. We have also adopted a shareholder rights plan. These provisions could discourage takeover attempts and could materially adversely affect the price of our stock. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit large shareholders from consummating a merger with, or acquisition of us. These provisions may prevent a merger or acquisition that could be attractive to shareholders and could limit the price investors would be willing to pay in the future for our common stock.

## **General Risks**

### ***If our internal controls are ineffective, our operating results could be adversely affected.***

Our internal controls over financial reporting may not prevent or detect misstatements because of its inherent limitations, including the possibility of human error, the circumvention or overriding of controls or fraud. Even effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. If we fail to maintain the adequacy of our internal controls, including any failure to implement required new or improved controls, or if we experience difficulties in their implementation, our business and operating results could be harmed and we could fail to meet our financial reporting obligations.

We are investing in technology to manage these reporting requirements. Implementing the appropriate changes to our internal controls may distract our officers and employees, result in substantial costs if we implement new processes or modify our existing processes and require significant time to complete. Any difficulties or delays in implementing these controls could impact our ability to timely report our financial results. In addition, we currently rely on a manual process in some areas which increases our exposure to human error or intervention in reporting our financial results. For these reasons, we may encounter difficulties in the timely and accurate reporting of our financial results, which could impact our ability to provide our investors with information in a timely manner. As a result, our investors could lose confidence in our reported financial information, and our stock price could decline.

### ***Our stock price could decline if a significant number of shares become available for sale.***

The current and future issuance and/or vesting of shares of our common stock under our outstanding and future stock options, stock awards, performance shares and deferred stock units, sales of substantial amounts of common stock in the public market following the issuance and/or vesting of such shares, and/or the perception that future sales of these shares could occur, could reduce the market price of our common stock and make it more difficult to sell equity securities in the future.

### ***Actions of activist shareholders could be disruptive and potentially costly, and the possibility that activist shareholders may seek changes that conflict with our strategic direction could cause uncertainty about the strategic direction of our business.***

Activist investors may attempt to effect changes in our strategic direction or our business objectives, or to acquire control or Board representation to advocate corporate actions such as financial restructuring, stock repurchases or sales of assets or the entire company. Activist campaigns that contest or conflict with our strategic direction could have an adverse effect on our results of operations and financial conditions, as responding to proxy contests and other actions by activist shareholders can disrupt our operations, be costly and time consuming and divert the attention of our Board and senior management from the pursuit of business strategies. These types of actions could cause significant fluctuations in our stock price based on temporary or speculative market perceptions or other factors that do not necessarily reflect the underlying fundamentals and prospects of our business.

### ***Our insurance policies may not fully cover all losses we may incur.***

Although we attempt to limit our liability for damages arising from negligent acts, errors or omissions through contractual provisions, the limitations of liability included in our contracts may not fully protect us from liability or damages and may not be enforceable in all instances. In addition, not all of our contracts may limit our exposure for certain liabilities, such as data security claims or claims of third parties for which we may be required to indemnify our clients. Although we have general liability and errors and omissions insurance coverage, this coverage may not continue to be available on terms reasonable to us or in sufficient amounts to cover one or more large claims, and our insurers may disclaim coverage as to any future claim. The successful assertion of one or more large claims against us that are excluded from our insurance coverage or that exceed our available insurance coverage, or changes in our insurance policies (including premium increases or the imposition of large deductible or co-insurance requirements), could have a material adverse effect on our business, results of operations, financial condition and cash flows.

**Item 1B. *Unresolved Staff Comments***

None.

**Item 2. *Properties***

Our headquarters are located in Allen, Texas, a Dallas suburb, which is utilized by both operating segments. In the U.S., we operate a distribution facility in Memphis, Tennessee, with aggregate space of more than 442,000 square feet. We also operate two additional distribution facilities totaling an aggregate of approximately 649,000 square feet in Southaven, Mississippi. These facilities are located approximately ten miles from the Memphis International Airport. In addition, in 2020, we opened a distribution center in Dallas, Texas, with aggregate space of more than 57,000 square feet. These distribution facilities are used by the PFS Operation segment.

Internationally, we operate two distribution complexes in Liège, Belgium with aggregate space of approximately 268,000 square feet, distribution operations in Ontario, Canada with approximately 92,000 square feet, and distribution operations in Southampton, U.K. with approximately 107,000 square feet. These distribution centers predominantly relate to the operations of the PFS Operations segment.

We also operate facilities in Bangalore, India and Basingstoke, U.K., utilized by both the LiveArea and PFS Operations segments, and Sofia, Bulgaria, primarily used by the LiveArea segment. Each of these facilities provide primarily technology development, operations and administrative support.

LiveArea offices are also operated in Raleigh, North Carolina, St. Louis Park, Minnesota, and London, U.K.

We have customer service facilities in Dallas, Texas, Southampton, U.K., and Ontario, Canada, however, due to the COVID-19 pandemic, they are no longer occupied as we have shifted the customer service operations to a work from home model. Our call center technology permits the automatic routing of calls to available customer service representatives in several of our call centers.

We lease our headquarters, all of our distribution and other facilities under third party leases that generally contain one or more renewal options.

We believe that our facilities are suitable for their purpose, adequate to support their businesses, and are in good operating condition.

**Item 3. *Legal Proceedings***

We are not party to any legal proceedings other than routine claims and lawsuits arising in the ordinary course of our business. We do not believe such claims and lawsuits, individually or in the aggregate, will have a material adverse effect on our business.

**Item 4. *Mine Safety Disclosures***

Not applicable.

## PART II

### Item 5. *Market for Registrant's Common Equity, Related Shareholder Matters and Issuer Purchases of Equity Securities*

For information regarding the securities authorized for issuance under our equity compensation plans, refer to "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" included in Part III, Item 12 of this report.

#### **Common Stock**

Our common stock is listed, and currently trades, on the NASDAQ Capital Market under the symbol "PFSW."

As of March 26, 2021, there were 89 record holders of the common stock.

#### **Dividend Policy**

We have never declared or paid cash dividends on our common stock and do not anticipate the payment of cash dividends on our common stock in the foreseeable future. We are also restricted from paying dividends under our debt agreements without the prior approval of our lenders. The payment of any future cash dividends will be at the discretion of our Board of Directors and will depend upon, among other things, future earnings, operations, capital requirements, the general financial condition of the Company and general business conditions and the approval of our lenders. See "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources."

### Item 6. *Selected Financial Data*

Not applicable.

### Item 7. *Management's Discussion and Analysis of Financial Condition and Results of Operations*

*We believe the following discussion and analysis provides information that is relevant to an assessment and understanding of our consolidated results of operations and financial condition. The discussion and analysis should be read in conjunction with the consolidated financial statements and related notes thereto appearing elsewhere in this Form 10-K. This Management's Discussion and Analysis will help you understand:*

- Key events during 2020;
- Our results of operations for 2020, as well as certain projections for the future;
- Our liquidity and capital resources;
- The impact of recently issued accounting standards on our financial statements; and
- Our critical accounting policies and estimates.

#### **Key Events**

On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic and the President of the United States declared it a national emergency. We continue to closely monitor the impact of the 2019 novel coronavirus, or COVID-19, pandemic on all aspects of our business. Our focus has been, and continues to be, on protecting our employees, while continuing to serve our clients. While the COVID-19 pandemic has not had a material adverse impact on our results of operations to date, the future impacts of the pandemic and any resulting economic impact are largely unknown and rapidly evolving.

Beginning in late March 2020 and continuing through the fourth quarter of 2020, we experienced an increase in demand from certain clients for our services in our PFS Operations segment, as more consumers around the world practiced social distancing, complied with stay-at-home restrictions and many retail stores were closed during the March 2020 to June 2020 period. This generated increased volume of online ordering. This trend continued into the third quarter of 2020 but at a reduced rate from the March 2020 through June 2020 period, and increased, again as we entered our traditional peak season. However, going forward there could be significant volatility in customer demand and buying habits as the pandemic continues and the resulting adverse economic impacts continue or deepen. We have begun experiencing labor rate increases in certain of our markets for fulfillment activities. We believe this will continue and that this could impact our overall fulfillment related costs and staffing. We will continue to monitor such cost increases as well as assess our pricing to address these increased costs.

Both our LiveArea and PFS Operations business segments are engaged in the support of our clients' direct to consumer online business activity. Due to restrictions on traditional brick and mortar operations introduced by government mandates in 2020, many businesses, including many of our clients, have migrated an incremental amount of their investments and business volumes to their online channel, including both website development and marketing activity as well as the physical movement of

product. This is a trend which has continued through the fourth quarter of 2020. We believe this has resulted in, and at least in the near future is expected to continue to provide us with a strong demand for our service offerings. As the restrictions on brick and mortar operations are lessened, this may lead to reduced demand for the services of LiveArea and PFS Operations as customers return to stores. Despite the unpredictability of volumes brought on by the COVID-19 pandemic, the contracts that had been secured during the pandemic with new clients and extension of contracts with existing clients were made with the intention to support volumes post-COVID-19 that are the same or higher than those pre-COVID-19 pandemic. As a result of the increased volumes that are currently occurring and those potentially expected, we have secured additional warehouse space and headcount to meet the current and expected future volumes for the PFS Operations segment.

We are incurring additional costs related to the enhanced cleaning regimen implemented in our facilities and purchases of personal protective equipment ("PPE") for employees. As of December 31, 2020, we have incurred approximately \$1.3 million in costs related to the COVID-19 pandemic, excluding hourly wage rate related labor cost increases and performance based incentives. Included in this \$1.3 million, are capital expenditures related to the COVID-19 pandemic which amounted to approximately \$0.5 million. Beginning in April 2020, we began receiving requests from a limited number of our clients to assist them with extended payment terms and/or pricing adjustments for a short time period. For the twelve months ended December 31, 2020, this has not resulted in a material impact to cash flows. We have also begun to see delays in certain limited projects and requests from certain clients to reduce current staffing on our time and materials projects. While we believe this will have a short-term impact on cash flow and revenues, we do not currently anticipate these identified modifications to date will have a material impact to our overall business and financial results. We will continue to monitor these for potential impacts to future cash flow.

As a result of the impact of the COVID-19 pandemic, many businesses have or will be experiencing short-term or long-term liquidity issues. Based on our current expectations, we believe we have the appropriate financial structure in place to support our own business operations. However, we do expect increased potential risk from the viability of clients and their ability to make payments on time. We have and will continue to closely monitor our clients' financial results, payment patterns and business updates in an effort to minimize any potential credit risk impact.

While the COVID-19 pandemic has not yet had a material adverse impact on our operations to date, the extent and duration of future impacts of the pandemic and any resulting economic impact on our business are largely unknown and difficult to predict.

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security ("CARES") Act was enacted and signed into law. The Company has made use of the allowance granted under section 2302 of the CARES Act, which permits employers to forgo timely payment of the employer portions of Social Security and RRTA taxes that would otherwise be due from March 27 through December 31, 2020, without penalty or interest charges. We have elected this option and it has resulted in deferred payments through December 31, 2020 totaling \$3.7 million, due in equal payments on December 31, 2021 and December 31, 2022. Similarly, the UK and Belgium governments have granted businesses the option to defer the payment of certain value-added tax ("VAT") amounts. We have elected to take advantage of the options available to us but the effects have been immaterial.

In March 2020, we established a COVID-19 task force, comprised of leaders from a cross function of each of our operational sites and business units. The objectives of the task force are to:

- Gather daily key information from each site regarding risks, opportunities and developments related to the pandemic's impact and Company's response to ensure unfiltered access to information for the Company's leadership.
- Identify and accumulate data required for decision making at the leadership level, including providing recommended courses of action.
- Coordinate communication plans for all of our geographic locations.
- Access, establish, monitor and adjust our business operations continuity plans for each geographic location.
- Ensure formal tracking of any known or suspected employee cases of COVID-19.

We have taken several precautionary measures designed to help minimize the risk of the spread of the virus to our employees, including suspending all non-essential travel worldwide for our employees, and adjusting our operations wherever necessary to help ensure a safe environment for our staff across business functions.

We have transitioned our professional staff and contact center agents to a work-from-home solution, with only a few exceptions. While all of our distribution facilities are considered essential businesses in the jurisdictions in which they are located and have continued to operate, we have established procedures to ensure the safety of our distribution facility staff, including:

- Employees are not required to come to work if they are not comfortable doing so.



- Employees that are experiencing or have been exposed to anyone exhibiting symptoms of COVID-19 have been told not to come to work and to seek medical attention and/or testing and stay home until they receive a negative test result, have self-quarantined for 14 days and/or receive clearance from a medical professional.
- Performing temperature checks at entry doors. Employees exhibiting any symptoms of COVID-19 or who have an elevated temperature are not allowed in the facility.
- Provide PPE for employees including gloves, face masks and in certain facilities, face shields. We have provided training for proper use of the equipment.
- Require distancing among employees inside of the working areas of the distribution facilities and require that all employees use the greatest social distancing available inside of the facilities with constant enforcement being maintained.
- Provide mobile cleaning stations for employee use at any time and access to hand sanitizer stations.
- Increased and enhanced cleaning regimen in all facilities. Facilities are cleaned on a daily basis, as well as a nightly cleaning that includes disinfectant fogging at some facilities.
- Facilitating virtual focus groups with employees to seek out ways to provide suggestions to the task force.

## Overview

PFSweb is a Global Commerce Services Company. We manage the entire customer shopping experience for major branded manufacturers and retailers through two business segments, LiveArea Professional Services ("LiveArea") and PFS Operations. LiveArea is a global customer experience and e-commerce agency, providing a comprehensive set of digital agency services to support, develop and improve business-to-business ("B2B"), business-to-consumer ("B2C"), and business-to-business-to-consumer ("B2B2C") customer experiences both online and in-store. LiveArea services include: NXT Intelligence™, Service Design, Product Innovation, Connected Commerce, Performance Marketing, and Orchestrated Services. Through these services, we envision, build, and launch innovative products and omni-channel commerce solutions powered by data-driven insights to help our clients elevate their customer relationships. The PFS Operations segment provides services to support or improve the physical, post-click experience, such as logistics and fulfillment, customer care, and order-to-cash services including distributed order orchestration and payment services. We offer our services on an à la carte basis or as a complete end-to-end solution. Major brands and other companies turn to us to optimize their customer experiences and enhance their traditional and online business channels, creating commerce without compromise.

*Service Fee Model.* We refer to our standard seller services financial model as the Service Fee model. In this model, our clients own the inventory, are the merchants of record, and engage us to provide various infrastructure, technology and digital agency services in support of their business operations. We offer our services as an end-to-end solution, which enables our clients to outsource their complete e-commerce needs to a single source and focus on their core competencies, though clients are also able to select individual or groupings of our various service offerings on an à la carte basis.

We currently provide services to clients that operate in a range of vertical markets across B2C, B2B and B2B2C. These services include health, fragrance and beauty products; cosmetics; fashion apparel and accessories; luxury goods; CPG; coins and collectibles; jewelry; home furnishings and housewares; consumer electronics; QSR; telecommunications; technology manufacturing; computer and office products; and others. In the Service Fee model, we typically charge for our services on a time and material basis, a cost-plus basis, a percent of shipped revenue basis, project or retainer basis for our professional services or a per transaction basis, such as a per labor hour basis for web-enabled customer contact center services and a per-item basis for fulfillment services. Additional fees are billed for other services. We price our services based on a variety of factors, including, but not limited to, our labor costs, the depth and complexity of the services provided, the amount of capital expenditures or systems customization required, order volume, geography served and the length of contract.

Many of our service fee contracts involve third-party vendors who provide additional services, such as package delivery. The costs we are charged by these third-party vendors for these services are often passed on to our clients. Our billings for reimbursements of these costs and other 'out-of-pocket' expenses include travel, shipping and handling costs and telecommunication charges and are included in pass-through revenue.

*Agent (Flash) Model.* In our PFS Operations business unit, as an additional service, we offer the Agent, or Flash, financial model, in which our clients maintain ownership of the product inventory stored at our locations as in the Service Fee model. When a customer orders the product from our clients, a "flash" sale transaction passes product ownership to us for each order and we in turn immediately re-sell the product to the customer. The "flash" ownership exchange establishes us as the merchant of record, which enables us to use our existing merchant infrastructure to process sales to end customers, removing the

need for the clients to establish these business processes internally, but permitting them to control the sales process to end customers. In this model, based on the terms of our current client arrangements, we record product revenue net of cost of product revenue as a component of service fee revenue in our consolidated statement of operations.

*Retail Model.* Our PFS Operations business unit also provides a Retail model which allows us to purchase inventory from the client. We place the initial and replenishment purchase orders with the client and take ownership of the product either upon shipment to or delivery to our facility. In this model, depending on the terms of our client arrangements, we may own the inventory and the accounts receivable arising from our product sales. Under the Retail model, depending upon the product category and sales characteristics, we may require the client to provide product price protection as well as product purchase payment terms, right of return, and obsolescence protection appropriate to the product sales profile. Depending on the terms of our client arrangements in the Retail model, we record in our consolidated statement of operations either: 1) product revenue as a component of product revenue, or 2) product revenue net of cost of product revenue as a component of service fee revenue. In general, we seek to structure client relationships in our Retail model under the net revenue approach to more closely align with our service fee revenue financial presentation and mitigate inventory ownership risk, although we have one client still operating under the gross revenue approach. Freight costs billed to customers are reflected as components of product revenue. This business model generally requires significant working capital, for which we have credit available either through credit terms provided by our clients or under senior credit facilities.

Currently, we are targeting growth within our Retail model through relationships with clients under which we can record service fee revenue in our consolidated statement of operations. These relationships are often driven by the sales and marketing efforts of the manufacturers, retailers, and third-party sales partners. In addition, as a result of certain operational restructuring of its business, our primary client relationship operating in the Retail model, Ricoh, has implemented, and will continue to implement, certain changes in the sale and distribution of Ricoh products. The changes have resulted, and are expected to continue to result, in reduced product revenues and profitability under our Retail model.

Growth is a key element to achieving our future goals, including achieving and maintaining sustainable profitability. Growth in our company is driven by two main elements: new client relationships and organic growth from existing clients. Within our LiveArea segment, we primarily focus our sales efforts on engaging with brands, retailers, manufacturers and partnerships with various software platform companies to perform discrete commerce projects such as website and mobile design, platform selection and platform implementation and system integration efforts, digital marketing, data strategy and technology. In addition, LiveArea's orchestrated services is a coordinated effort across all service lines and goes beyond a traditional managed services offering. LiveArea's orchestrated services offering is integrated into an array of services to optimize, manage, and protect commerce technology. Within our PFS Operations segment, we primarily focus our sales efforts on larger contracts with brand-name companies within four primary target markets, health and beauty, home goods and collectibles, fashion, and consumer packaged goods. Within both segments, we focus our sales efforts on both new clients and also on existing clients where we believe opportunity exists to expand a client relationship to include additional services within the segment, across segments and/or across multiple geographies. We continue to monitor and control our costs to focus on profitability. While we are targeting our new service fee contracts to yield incremental gross profit, we also expect to incur incremental investments in technology development, operational and support management and sales and marketing expenses to help generate growth. We also look for growth opportunities across both LiveArea and PFS Operations to explore end-to-end solutions, as well as additional a la carte projects building on our existing relationships.

Our expenses comprise primarily four categories: 1) cost of service fee revenue, 2) cost of product revenue, 3) cost of pass-through revenue and 4) selling, general and administrative expenses.

*Cost of service fee revenue* - consists primarily of compensation and related expenses for our web-enabled customer contact center services, international fulfillment and distribution services and professional, digital agency and technology services, and other fixed and variable expenses directly related to providing services under the terms of fee based contracts, including certain occupancy and information technology costs and depreciation and amortization expenses.

*Cost of product revenue* - consists of the purchase price of product sold and freight costs, which are reduced by certain reimbursable expenses. These reimbursable expenses include pass-through customer marketing programs, direct costs incurred in passing on any price decreases offered by vendors to cover price protection and certain special bids, the cost of products provided to replace defective product returned by customers and certain other expenses as defined under the distributor agreements.

*Cost of pass-through revenue* - the related reimbursable costs for pass-through expenditures are reflected as cost of pass-through revenue.

*Selling, General and Administrative expenses* - consist of expenses such as compensation, related expenses for sales and marketing staff, distribution costs (excluding freight) applicable to certain Retail model engagements, executive, management

and administrative personnel and other overhead costs, including certain occupancy and information technology costs, and depreciation and amortization expenses and acquisition related, restructuring and other costs.

Monitoring and controlling our available cash balances and our expenses continues to be a primary focus. Our cash and liquidity positions are important components of our financing of both current operations and our targeted growth.

### Operating Results

The following table discloses certain financial information for the periods presented, expressed in terms of dollars, dollar change, percentage change and as a percentage of total revenues (in thousands, except percentages):

			Change		% of Total Revenues	
	2020	2019	\$	%	2020	2019
<b>Revenues</b>						
Service fee revenue	\$ 257,661 <sup>(1)</sup>	\$ 214,382 <sup>(1)</sup>	\$ 43,279	20.2 %	75.2 %	72.9 %
Product revenue, net	22,865	26,613	(3,748)	(14.1)%	6.7 %	9.1 %
Pass-through revenue	61,979	53,027	8,952	16.9 %	18.1 %	18.0 %
Total revenues	342,505	294,022	48,483	16.5 %	100.0 %	100.0 %
<b>Cost of Revenues</b>						
Cost of service fee revenue	175,526	141,616	33,910	23.9 %	68.1 % <sup>(2)</sup>	66.1 %
Cost of product revenue	21,594	25,158	(3,564)	(14.2)%	94.4 % <sup>(3)</sup>	94.5 %
Pass-through cost of revenue	61,979	53,027	8,952	16.9 %	100.0 % <sup>(4)</sup>	100.0 %
Total costs of revenues	259,099	219,801	39,298	17.9 %	75.6 %	74.8 %
Service fee gross profit	82,135	72,766	9,369	12.9 %	31.9 % <sup>(2)</sup>	33.9 %
Product revenue gross profit	1,271	1,455	(184)	(12.6)%	5.6 % <sup>(3)</sup>	5.5 %
Pass-through gross profit	—	—	—	—	— <sup>(4)</sup>	—
Total gross profit	83,406	74,221	9,185	12.4 %	24.4 %	25.2 %
Selling, general and administrative expenses	85,351	73,334	12,017	16.4 %	24.9 %	24.9 %
Income (loss) from operations	(1,945)	887	(2,832)	(319.3)%	(0.6)%	0.3 %
Interest expense, net	1,486	1,896	(410)	(21.6)%	0.4 %	0.6 %
Loss before income taxes	(3,431)	(1,009)	(2,422)	240.0 %	(1.0)%	(0.3)%
Income tax expense, net	2,073	1,161	912	78.6 %	0.6 %	0.4 %
Net loss	\$ (5,504)	\$ (2,170)	\$ (3,334)	153.6 %	(1.6)%	(0.7)%

(1) Includes \$1.0 million and no related party revenue as of December 31, 2020 and December 31, 2019, respectively.

(2) Represents the measure as a percent of Service fee revenue.

(3) Represents the measure as a percent of Product revenue, net.

(4) Represents the measure as a percent of Pass-through revenue.

### Year Ended December 31, 2020 Compared to Year Ended December 31, 2019

#### Segment Operating Data

PFS Operations (in thousands, except percentages)

	Year Ended December 31,		Change	Change, %
	2020	2019		
<b>Revenues:</b>				
Service fee revenue	\$ 174,868	\$ 139,490	\$ 35,378	25 %
Product revenue, net	22,865	26,613	(3,748)	(14)%
Pass-through revenue	58,874	50,296	8,578	17 %
<b>Total revenues</b>	<b>\$ 256,607</b>	<b>\$ 216,399</b>	<b>\$ 40,208</b>	<b>19 %</b>
<b>Costs of revenues:</b>				
Cost of service fee revenue	130,275	101,108	29,167	29 %
Cost of product revenue	21,594	25,158	(3,564)	(14)%
Cost of pass-through revenue	58,874	50,296	8,578	17 %
<b>Total costs of revenues</b>	<b>\$ 210,743</b>	<b>\$ 176,562</b>	<b>\$ 34,181</b>	<b>19 %</b>
<b>Gross profit</b>	<b>\$ 45,864</b>	<b>\$ 39,837</b>	<b>\$ 6,027</b>	<b>15 %</b>
Direct operating expenses	30,694	28,292	2,402	8 %
<b>Direct contribution</b>	<b>\$ 15,170</b>	<b>\$ 11,545</b>	<b>\$ 3,625</b>	<b>31 %</b>

PFS Operations total revenues for the year ended December 31, 2020 increased by \$40.2 million compared with 2019. Service fee revenue increased by \$35.4 million as compared to 2019. The service fee revenue increase was primarily due to growth from new and existing clients, driven primarily from increased fulfillment activity related to increased online spending as a result of the COVID-19 pandemic, partially offset by certain client terminations and client bankruptcies. For the year ended December 31, 2019, we had service fee revenues totaling approximately \$3.2 million related to two clients that filed bankruptcy and subsequently liquidated their operations in 2019. Excluding the decrease from these clients, service fee revenues increased by \$38.6 million for the year ended December 31, 2020. Product revenue, net, decreased by \$3.7 million due to this revenue stream being primarily dependent on one client, which restructured its operations and discontinued certain product lines. Pass-through revenue, primarily related to freight activity, increased primarily due to incremental activity with both new and existing clients partially offset by the impact of a client's transition of their freight management activities.

PFS Operations gross margin decreased by 0.5% to 17.9% for the year ended December 31, 2020 as compared to 18.4% in 2019. The decreased gross margin is due to a decrease of our service fee margin by 2.0% to 25.5% for the year ended December 31, 2020 as compared to 27.5% in the same period of the prior year, primarily as a result of increased fulfillment labor rates and PPE related costs. Additionally, our gross margin for the PFS Operations segment was negatively impacted by reduced technology-related project and order-to-cash management activity. This was somewhat offset by our service fee business, which generates a higher gross margin than the product revenue and pass-through revenue activity representing a larger proportion of our total revenues for the year ended December 31, 2020 as compared to 2019.

Direct operating expenses for the year ended December 31, 2020 increased by \$2.4 million as compared to 2019. This increase is largely due to increased stock-based compensation expense which increased by \$1.7 million for the year ended December 31, 2020 as compared to 2019. The increased stock compensation expense for the year ended December 31, 2020 arose from the issuance of incremental awards after the approval of a new Stock and Incentive Plan by shareholders on June 30, 2020. Excluding the impact of stock-based compensation, direct operating expenses increased by \$0.7 million for the year ended December 31, 2020, which was primarily due to increased personnel related costs (including variable compensation expense), facility costs, and sales and marketing related spend, partially offset by reduced travel related spend.

*LiveArea Professional Services (in thousands, except percentages)*

	Year Ended December 31,		Change	Change, %
	2020	2019		
<b>Revenues:</b>				
Service fee revenue	\$ 82,793 (1)	\$ 74,892 (1)	\$ 7,901	11 %
Pass-through revenue	3,105	2,731	374	14 %
Total revenues	\$ 85,898	\$ 77,623	\$ 8,275	11 %
<b>Costs of revenues:</b>				
Cost of service fee revenue	45,251	40,508	4,743	12 %
Cost of pass-through revenue	3,105	2,731	374	14 %
Total costs of revenues	\$ 48,356	\$ 43,239	\$ 5,117	12 %
Gross profit	\$ 37,542	\$ 34,384	\$ 3,158	9 %
Direct operating expenses	30,135	25,137	4,998	20 %
Direct contribution	\$ 7,407	\$ 9,247	\$ (1,840)	(20)%

(1) Includes \$1.0 million and no related party revenue as of December 31, 2020 and December 31, 2019, respectively.

LiveArea Professional Services revenues for the year ended December 31, 2020 increased by \$8.3 million compared to 2019. The increase in revenues were primarily due to a higher level of new and existing client activity, as a result of increased success in booking new projects and engagements during late 2019 and continuing into 2020.

LiveArea Professional Services gross margin decreased by 0.6% to 43.7% for the year ended December 31, 2020 as compared to 44.3% in 2019. The decrease in gross margin for the year ended December 31, 2020 is primarily attributable to higher than expected costs incurred on certain client projects as well as short term pricing adjustments for a limited number of clients.

Direct operating expenses increased by \$5.0 million for the year ended December 31, 2020 compared to 2019. The increase was primarily attributable to a \$2.8 million increase in stock-based compensation for the year ended December 31, 2020. Excluding this expense, direct operating expenses increased by \$2.2 million for the year ended December 31, 2020, which arose primarily as a result of incremental sales and marketing personnel costs and increased variable compensation expense.

Corporate (in thousands, except percentages)

	Year Ended December 31,		Change	Change, %
	2020	2019		
Unallocated corporate expenses	\$ 24,522	\$ 19,905	\$ 4,617	23 %

Unallocated corporate expenses increased by \$4.6 million for the year ended December 31, 2020 compared to 2019. This increase was, in part, attributable to increased stock-based compensation of \$3.2 million, offset by a \$1.6 million reduction in vacation expense for the year ended December 31, 2020. The decrease in vacation expense primarily related to a change in policy to allow for the introduction of a flexible vacation policy in the second quarter of 2020 that is not restricted to time earned by the Company for our US full-time exempt employees. Excluding the impacts of these factors, unallocated corporate expenses increased by \$3.0 million for the year ended December 31, 2020, primarily as a result of increased personnel and property tax related costs.

Income Taxes

During the twelve months ended December 31, 2020, we recorded a tax provision of \$2.1 million, comprised primarily of \$1.3 million related to the majority of our international operations, \$0.3 million related to state income taxes, and \$0.5 million associated with the tax amortization of goodwill in relation to one of our prior acquisitions. A valuation allowance has been provided for the majority of our domestic net deferred tax assets, which are primarily related to our net operating loss carryforwards, and for certain foreign deferred tax assets.

The CARES Act, among other things, permits net operating loss ("NOL") carryforwards and carrybacks to offset 100% of taxable income for taxable years beginning before 2021. In addition, the CARES Act allows NOLs incurred in 2018, 2019, and 2020 to be carried back to each of the five preceding taxable years. Due to the Company's historical NOLs, the NOL carryback provision of the CARES Act will not result in a tax benefit for the Company.

### Liquidity and Capital Resources

We currently believe our cash position, financing available under our credit facilities and funds generated from operations will satisfy our presently known operating cash needs, our working capital and capital expenditure requirements, our

current debt and lease obligations, and additional loans to our subsidiaries, if necessary, for at least the next twelve months. However, our assumptions and expectations may be impacted by the uncertain duration and extent of the adverse economic conditions caused by the COVID-19 pandemic.

To obtain additional financing in the future, in addition to our current cash position, we may evaluate various financing alternatives including the sale of equity, utilizing capital or operating leases, borrowing under our credit facilities, expanding our current credit facilities or entering into new debt agreements. No assurances can be given we will be successful in obtaining any additional financing or the terms thereof.

Our cash position decreased in 2020 primarily due to payments made applicable to capital expenditures, partially offset by cash generated from operating activities.

#### ***Cash Flows from Operating Activities***

During 2020, cash provided by operations was \$1.8 million, compared to \$10.9 million in 2019. Both periods included benefits from cash income generated from operations before changes in operating assets and liabilities. Such benefits were decreased by the net impact of changes in assets and liabilities, primarily related to the amount and timing of client revenue billings and collections as well as vendor purchasing and payment activity. Additionally, in 2020, one of our clients transitioned away from our credit card collections service, which reduced our net cash provided by operating activities by approximately \$7.0 million.

We have deferred payment of the employer portions of Social Security and RRTA taxes that would otherwise be due from March 27 through December 31, 2020, by election of the option provided by the CARES Act. This has resulted in deferred payments through December 31, 2020 totaling \$3.7 million, due in equal payments on December 31, 2021 and December 31, 2022.

#### ***Cash Flows from Investing Activities***

Cash used in investing activities included capital expenditures of \$4.2 million and \$3.8 million in the years ended December 31, 2020 and 2019, respectively, exclusive of property and equipment acquired under debt and finance leases, which consisted primarily of capitalized software costs and equipment purchases. Capital expenditures have historically consisted of additions to upgrade our management information systems, development of customized technology solutions to support and integrate with our service fee clients and general expansion and upgrades to our facilities, both domestic and foreign. We expect to incur capital expenditures to support new contracts and anticipated future growth opportunities. Based on our current client business activity and our targeted growth plans, we anticipate our total investment in upgrades and additions to facilities and information technology solutions and services for the upcoming twelve months, including costs to implement new clients, will be approximately \$7.5 million to \$10.0 million, including amounts expected to be financed through debt or finance leases. Additional capital expenditures may be necessary to support the infrastructure requirements of new clients. To maintain our current operating cash position, a portion of these expenditures may be financed through client reimbursements, debt, operating or finance leases or additional equity. We may elect to modify or defer a portion of such anticipated investments in the event that we do not obtain the financing results necessary to support such investments.

#### ***Cash Flows from Financing Activities***

During 2020, cash provided by financing activities was \$0.2 million, compared to cash used in financing activities of \$9.4 million in 2019. The balances in both periods were primarily due to net borrowing and payment activity on our revolving loan and other debt.

#### ***Working Capital***

During 2020, our working capital increased to \$24.0 million from \$14.3 million at December 31, 2019. This increase was primarily related to income generated from operations before working capital changes, plus net borrowings on our revolving debt facility, partially offset by capital expenditures.

To obtain any necessary additional financing in the future, in addition to our current cash position, we continue to evaluate our needs in light of various financing alternatives potentially available including the sale of equity, utilizing capital or operating leases, borrowing under our credit facilities, expanding our current credit facilities or entering into new debt agreements. No assurances can be given we will be successful in obtaining any additional financing or the terms thereof. We currently believe our cash position, financing available under our credit facilities and funds generated from operations will satisfy our presently known operating cash needs, our working capital and capital expenditure requirements, our current debt and lease obligations, and additional loans to our subsidiaries, if necessary, for at least the next twelve months.

Our term and revolving loan facilities described below contain both financial and non-financial covenants. To the extent we fail to comply with our debt covenants, including the financial covenant requirements, and we are not able to obtain a waiver, the lenders would be entitled to accelerate the repayment of any outstanding credit facility obligations, and exercise all other rights and remedies, including sale of collateral. An acceleration of the repayment of our credit facility obligations may have a material adverse impact on our financial condition and results of operations. We can provide no assurance we will have the financial ability to repay all such obligations. As of December 31, 2020, we were in compliance with all debt covenants. Further, non-renewal of any of our credit facilities may have a material adverse impact on our business and financial condition.

### ***Inventory Financing***

To finance its distribution of Ricoh products in the U.S., Supplies Distributors has a short-term credit facility with IBM Credit LLC (“IBM Credit”) that provides financing for eligible inventory and certain receivables for up to \$7.5 million. We have provided a collateralized guarantee to secure the repayment of this credit facility. The IBM Credit facility does not have a stated maturity and both parties have the ability to exit the facility following a 90-day notice.

This credit facility contains various restrictions upon the ability of Supplies Distributors and its subsidiaries to, among other things, merge, consolidate, sell assets, incur indebtedness, make loans, investments and payments to related parties (including entities directly or indirectly owned by PFSweb, Inc.), provide guarantees, make investments and loans, pledge assets, make changes to capital stock ownership structure and pay dividends, as well as financial covenants, such as annualized revenue to working capital, net profit after tax to revenue and total liabilities to tangible net worth, as defined, and are secured by all of the assets of Supplies Distributors, as well as a collateralized guaranty of PFSweb. Additionally, we are required to maintain a subordinated loan to Supplies Distributors of no less than \$1.0 million and are restricted with regard to transactions with related parties, indebtedness, and changes to capital stock ownership. Furthermore, we are obligated to repay any over-advance made to Supplies Distributors or its subsidiaries under these facilities if they are unable to do so. We have also provided a guarantee of substantially all of the obligations of Supplies Distributors and its subsidiaries to IBM and Ricoh.

### ***Debt and Finance Lease Obligations***

*U.S. Credit Agreement.* In August 2015, we entered into a credit agreement (“Credit Agreement”) with Regions Bank, as agent for itself and one or more future lenders (the “Lenders”). Under the Credit Agreement, and subject to the terms set forth therein, the Lenders provided us with a revolving loan facility for up to \$32.5 million and a term loan facility for up to \$30 million. Borrowings under the Credit Agreement accrued interest at a variable rate based on prime rate or Libor, plus an applicable margin.

On November 1, 2018, we entered into Amendment No.1 to our credit agreement with Regions Bank (the “Amended Facility”). The Amended Facility provides for an increase in availability of our revolving loans to \$60.0 million, with the ability for a further increase of \$20.0 million to \$80.0 million, and the elimination of the term loan. Amounts outstanding under the term loan were reconstituted as revolving loans. The Amended Facility also extends the maturity date to November 1, 2023.

As of December 31, 2020 and 2019, the weighted average interest rate on the revolving loan facility was 2.52% and 3.96%, respectively. In connection with the Amended Facility, the Company paid \$0.3 million of fees, which are being amortized through the life of the Amended Facility and are reflected as a net reduction in debt. The Amended Facility is secured by a lien on substantially all of the operating assets of the US entities and a pledge of 65% of the shares of certain of our foreign subsidiaries. The Amended Facility contains cross default provisions, various restrictions upon the Company’s ability to, among other things, merge, consolidate, sell assets, incur indebtedness, make loans and payments to subsidiaries, affiliates and related parties, make capital expenditures, make investments and loans, pledge assets, make changes to capital stock ownership structure, as well as financial covenants, as defined, of a minimum consolidated fixed charge ratio and a maximum consolidated leverage ratio.

*Master Lease Agreements.* The Company has various agreements that provide for leasing or financing transactions of equipment and other assets and will continue to enter into such arrangements as needed to finance the purchasing or leasing of certain equipment or other assets. Borrowings under these agreements, which generally have terms of three to five years, are generally secured by the related equipment, and in certain cases, by a Company parent guarantee.

Other than our capital and operating lease commitments, we do not have any other material financial commitments, although future client contracts may require capital expenditures and lease commitments to support the services provided to such clients.

### **Debt Covenants**

Certain of our credit facilities contain various financial and non-financial covenants, including covenants that restrict our ability to incur additional indebtedness, create or permit liens on assets, engage in mergers or consolidations, and place restrictions on the transfer of assets or the payment of dividends between us and our subsidiaries.

To the extent we fail to comply with our debt covenants, including the financial covenant requirements and we are not able to obtain a waiver, the lenders would be entitled to accelerate the repayment of any outstanding credit facility obligations, and exercise all other rights and remedies, including sale of collateral. An acceleration of the repayment of our credit facility obligations may have a material adverse impact on our financial condition and results of operations. We can provide no assurance we will have the financial ability to repay all such obligations. As of December 31, 2020, we were in compliance with all debt covenants. Further, non-renewal of any of our credit facilities may have a material adverse impact on our business and financial condition.

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

There are no off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

#### **New Accounting Pronouncements**

See Note 2 "Significant Accounting Policies" to the consolidated financial statements in Item 8 of Part II of this 10-K for our discussion about new accounting pronouncements adopted and those pending.

#### **Critical Accounting Policies and Estimates**

Our consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America. These accounting principles require us to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of our financial statements and the reported amounts of revenues and expenses during the reporting period. While we do not believe the reported amounts would be materially different, application of these policies involves the exercise of judgment and the use of assumptions as to future uncertainties and, as a result, actual results could differ from these estimates. If there is a significant unfavorable change to current conditions, it could result in a material adverse impact to our business, operating results and financial condition. We evaluate our estimates and assumptions on an ongoing basis. We base our estimates on experience and on various other assumptions that we believe to be reasonable under the circumstances. All of our significant accounting policies are disclosed in the notes to our consolidated financial statements.

We have defined a critical accounting estimate as one that is both important to the portrayal of our financial condition and results of operations and requires us to make difficult, subjective or complex judgments or estimates about matters that are uncertain. During the past two years, we have not made any material changes in accounting methodology used to establish the critical accounting estimates discussed below. The following represent certain critical accounting policies that require us to exercise our business judgment or make significant estimates. In addition, there are other items within our consolidated financial statements that require estimation but are not deemed critical as defined above.

##### ***Revenue Recognition***

We derive revenue primarily from services provided under contractual arrangements with our clients or from the sale of products under our distributor agreements. We recognize revenue in accordance with Accounting Standards Codification 606, Revenue from Contracts with Customers ("ASC 606"), when control of the promised goods or services is transferred to our clients and customers, in an amount that reflects the consideration that we expect to receive in exchange for those goods or services.

We will often enter into contracts with clients and customers that contain multiple promises to transfer control of multiple products and/or services. To the extent a contract includes provisioning multiple products or services, we apply judgment to determine whether promised deliverables are capable of being distinct and are distinct in the context of the contract. If these criteria are not met, sales of different products or services are accounted for as a combined performance obligation. For arrangements with multiple distinct performance obligations, we allocate consideration among the performance obligations based on their relative standalone selling price. Standalone selling price is the price at which we would sell a promised good or service separately to our client and customers.

The Company may execute more than one contract or agreement with a single customer. The separate contracts or agreements may be viewed as one combined arrangement or separate agreements for revenue recognition purposes. In order to reach appropriate conclusions regarding whether such agreements should be combined, the Company evaluates whether the agreements were negotiated as a package with a single commercial objective, whether the amount of consideration to be paid in one agreement depends on the price and/or performance of another agreement, or whether the good or services promised in the agreements represent a single performance obligation. The conclusions reached can impact the identification of distinct performance obligations, allocation of the transaction price to each performance obligation and the timing of revenue recognition related to those arrangements



Our service fee revenue primarily relates to our order to cash, fulfillment, customer care, consulting, design, digital marketing and technology services.

We typically charge our service fee revenue on either a cost-plus basis, a percent of shipped revenue basis, a time and materials basis, project or retainer basis for our professional services, or a per transaction basis, such as a per item basis for fulfillment services or a per labor hour basis for web-enabled customer contact center services. Additional fees are billed for other services. For technology and digital agency services, we typically charge on a fixed cost basis based on an estimated maximum number of professional service labor hours or bill for each professional labor hour at a per hour price.

Within our PFS Operations unit, our performance obligations typically consist of standing ready to provide a service over a contract term. As such, our performance obligations within service fee revenue across the company are generally transferred to clients over time. A time-elapsed output measure is used to determine progress, with individual time increments representing a single series performance obligation. Variable consideration charged within these contracts is allocated to the individual reporting period in which the service was provided. Within our LiveArea Professional Services unit, our contracts are structured so that the amount the Company has a right to invoice corresponds directly with the value of our performance to date, we will elect the 'as-invoiced' practical expedient and recognize revenue as we have a right to invoice. If our contract is not structured such that it meets the criteria for this practical expedient, then we use an input measure of progress based on labor hours incurred to date to measure our progress to completion. The Company has determined that the above methods provide a faithful depiction of the transfer of services to the customer.

We perform set-up and integration services to support our fulfillment activities. When we determine these set-up and integration services do not meet the criteria for recognition as a separate performance obligation, any start up fees received represent a non-refundable up-front fee and are allocated to the other performance obligations within that contract. The Company recognizes revenue for non-refundable upfront implementation fees on a straight-line basis over the period between the initiation of the services through the end of the contract term. Related costs are capitalized as costs to fulfill the contract and are recognized over the expected performance period.

For contracts recognized over time, we recognize the estimated loss to the extent the project has been completed based on actual hours incurred compared to the total estimated hours. A loss is recognized when the current estimate of the consideration we expect to receive, modified to include any variable consideration, is less than the current estimate of total costs for the contract.

In instances where revenue is derived from sales of third-party vendor services, we record revenue on a gross basis when we are a principal to the transaction and net of costs when we are acting as an agent between the customer or client and the vendor. Whether we are the principal or agent in the transaction is determined by whether we control the service being provided.

Depending on the terms of the customer arrangement, product revenue is recognized at a point in time when control transfers to the customer. This is either upon shipment of the product or when the customer receives the product. Product revenue is reported net of estimated variable consideration related to returns and allowances, which are estimated based upon historical return information. Management also considers any other current information and trends in making estimates. If actual sales returns, allowances and discounts are greater than estimated by management, additional expense may be incurred.

#### ***Allowance for Doubtful Accounts***

The determination of the collectability of amounts due from our clients and customers requires us to use estimates and make judgments regarding future events and trends, including monitoring our clients' and customers' payment history and current credit worthiness to determine that collectability is reasonably assured, as well as consideration of the overall business climate in which our clients and customers operate. Inherently, these uncertainties require us to make frequent judgments and estimates regarding our clients and customers' ability to pay amounts due to us to determine the appropriate amount of valuation allowances required for doubtful accounts. Provisions for doubtful accounts are recorded when it becomes evident the client or customer will not make the required payments at either contractual due dates or in the future. These provisions may be based on discussions with the client or customer or the age of the amount due.

In our Retail model, we also maintain an allowance for uncollectible vendor receivables, which arise from inventory returns to vendors, vendor rebates, price protections and other promotions. We determine the sufficiency of the vendor receivable allowance based upon various factors, including payment history and vendor communication. Amounts received from vendors may vary from amounts recorded because of potential non-compliance with certain elements of vendor programs. If our estimated allowances for uncollectible accounts or vendor receivables subsequently prove insufficient, an additional allowance may be required.

We believe our allowances for doubtful accounts are adequate to cover anticipated losses under current conditions; however, uncertainties regarding changes in the financial condition of our clients and customers, either adverse or positive, could impact the amount and timing of any additional provisions for doubtful accounts that may be required.

#### ***Stock Compensation***

We utilize our Employee Stock and Incentive Plan (the “Employee Plan”) to help attract, retain and incentivize qualified executives, key employees and non-employee directors to increase our shareholder value and help build and sustain growth. The Employee Plan provides for the granting of incentive awards in a variety of forms, such as the award of an option, stock appreciation right, restricted stock award, restricted stock unit, deferred stock unit, among other stock-based awards.

Compensation cost is measured based on the grant date fair value of the award. Depending on the conditions associated with the vesting of the award, compensation cost is recognized on a straight-line or graded basis, net of estimated forfeitures, over the requisite service period of each award.

We estimate the fair value of each option grant on the date of grant using the Black-Scholes option-pricing model. For certain of the awards that have a market condition, we estimate the compensation cost using a Monte-Carlo simulation. The estimated fair value for awards involves assumptions for expected dividend yield, stock price volatility, risk-free interest rates and the expected life of the award.

If, in the future, we determine that another method of estimating an award’s fair value is more reasonable, or, if another method for calculating these input assumptions is prescribed by authoritative guidance, and, therefore, should be used to estimate expected volatility or expected term, the fair value calculated for our stock-based compensation could change significantly.

#### ***Income Taxes***

The liability method is used for determining our income taxes, under which current and deferred tax liabilities and assets are recorded in accordance with enacted tax laws and rates. Under this method, the amounts of deferred tax liabilities and assets at the end of each period are determined using the tax rate expected to be in effect when taxes are actually paid or recovered. Valuation allowances are established to reduce deferred tax assets to their net realizable value when it is more likely than not that some portion or all of the deferred tax assets will not be realized. In determining the need for valuation allowances, we have considered and made judgments and estimates regarding estimated future taxable income. These estimates and judgments include some degree of uncertainty and changes in these estimates and assumptions could require us to adjust the valuation allowances for our deferred tax assets. The ultimate realization of our deferred tax assets depends on the generation of sufficient taxable income in the applicable taxing jurisdictions. Although we believe our estimates and judgments are reasonable, actual results may differ, which could be material.

Because we operate in multiple countries, we are subject to the jurisdiction of multiple domestic and foreign tax authorities. Determination of taxable income in any jurisdiction requires the interpretation of the related tax laws and regulations and the use of estimates and assumptions regarding significant future events such as the amount, timing and character of deductions, permissible revenue recognition methods under the tax law and the sources and character of income and tax credits. Changes in tax laws, regulations, foreign currency exchange restrictions or our level of operations or profitability in each taxing jurisdiction could have an impact on the amount of income taxes that we provide during any given year.

#### ***Long-Lived Assets, Goodwill and Intangible Assets***

Long-lived assets include property, intangible assets, goodwill and certain other assets. We make judgments and estimates in conjunction with the carrying value of these assets, including amounts to be capitalized, depreciation and amortization methods and useful lives. Additionally, we review long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We review goodwill for impairment at least annually, on October 1. We record impairment losses in the period in which we determine the carrying amount is not recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net cash flows expected to be generated by the asset. This may require us to make judgments regarding long-term forecasts of our future revenues and costs related to the assets subject to review.

#### **Item 7A. *Quantitative and Qualitative Disclosures About Market Risk***

Not applicable.

**Item 8. Financial Statements and Supplementary Data**

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Shareholders and Board of Directors

PFSweb, Inc.  
Allen, TX

### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of PFSweb, Inc. (the “Company”) as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive income (loss), shareholders’ equity, and cash flows for the years then ended, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2020 and 2019, and the results of their operations and their cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the Company’s internal control over financial reporting as of December 31, 2020, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) and our report dated March 31, 2021 expressed an adverse opinion thereon.

### Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing separate opinions on the critical audit matter or on the accounts or disclosures to which it relates.

#### **Revenue Recognition of Service Fees**

The Company recorded \$256.6 million of service fee revenue for the year ended December 31, 2020. As discussed in Notes 2 and 3, the Company’s service fee revenue primarily includes revenues from fulfillment, consulting, customer care, design, digital marketing and technology services. Certain of the Company’s service revenue arrangements include multiple contracts with the same customer that contain multiple promises to perform various combinations of services. For such arrangements, the Company evaluates whether each promised service is distinct individually or distinct when combined with other promised services in the arrangement.

We identified the assessment of distinct performance obligations and the timing of revenue recognition for combined service contracts as a critical audit matter. Significant management’s judgment is applied for these multiple-contract arrangements including: (i) determining whether multiple service contracts should be combined and accounted for as a single contract; (ii) identifying the distinct performance obligations; and (iii) determining the timing of revenue recognition. Auditing these elements involved especially challenging auditor judgment due to the nature and extent of audit effort required to address these matters.

The primary procedures we performed to address this critical audit matter included:

- Evaluating conclusions reached by management on whether service contracts should be combined by testing a sample of revenue contracts and reviewing the related agreements and other contracts that were entered into at or near the same time with the same customer.
- Evaluating the appropriateness of the performance obligations identified by management, including material rights, and the determination of the timing of revenue recognition, by comparing to our independent assessment and investigating any differences.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2015.

Dallas, Texas

March 31, 2021

**PFSWEB, INC. AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS  
AS OF DECEMBER 31  
(In thousands, except share data)**

	2020	2019
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 10,751	\$ 12,434
Restricted cash	214	214
Accounts receivable, net of allowance for doubtful accounts of \$1,465 and \$1,071 at December 31, 2020 and December 31, 2019, respectively	80,778	72,262
Related party receivable	730	—
Inventories, net of reserves of \$96 and \$291 at December 31, 2020 and December 31, 2019, respectively	3,644	3,281
Other receivables	3,758	3,324
Prepaid expenses and other current assets	8,694	6,954
Total current assets	108,569	98,469
Property and equipment, net	19,178	18,436
Operating lease right-of-use assets, net	34,982	36,403
Identifiable intangibles, net	665	1,135
Goodwill	45,615	45,393
Other assets	4,152	3,772
Total assets	\$ 213,161	\$ 203,608
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Trade accounts payable	\$ 35,648	\$ 44,640
Accrued expenses	30,881	21,625
Current portion of operating lease liabilities	9,487	8,904
Current portion of long-term debt and finance lease obligations	3,414	2,971
Deferred revenue	5,115	6,058
Total current liabilities	84,545	84,198
Long-term debt and finance lease obligations, less current portion	39,073	34,829
Deferred revenue, less current portion	1,341	1,398
Operating lease liabilities	30,553	33,295
Other liabilities	5,286	3,046
Total liabilities	160,798	156,766
Commitments and contingencies		
Shareholders' equity:		
Preferred stock, \$1.00 par value; 1,000,000 shares authorized; none issued or outstanding	—	—
Common stock, \$0.001 par value; 35,000,000 shares authorized; 20,408,558 and 19,465,877 issued at December 31, 2020 and December 31, 2019, respectively; and 20,375,091 and 19,432,410 outstanding at December 31, 2020 and December 31, 2019, respectively	20	19
Additional paid-in capital	168,244	158,192
Accumulated deficit	(115,447)	(109,943)
Accumulated other comprehensive loss	(329)	(1,301)
Treasury stock at cost, 33,467 shares	(125)	(125)
Total shareholders' equity	52,363	46,842
Total liabilities and shareholders' equity	\$ 213,161	\$ 203,608

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

**PFSWEB, INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)  
FOR THE YEARS ENDED DECEMBER 31  
(In thousands, except per share data)**

	2020	2019
<b>Revenues:</b>		
Service fee revenue	\$ 256,615	\$ 214,382
Product revenue, net	22,865	26,613
Pass-through revenue	61,979	53,027
Related party revenue	1,046	—
Total revenues	<u>342,505</u>	<u>294,022</u>
<b>Costs of Revenues:</b>		
Cost of service fee revenue	175,526	141,616
Cost of product revenue	21,594	25,158
Cost of pass-through revenue	61,979	53,027
Total costs of revenues	<u>259,099</u>	<u>219,801</u>
Gross profit	83,406	74,221
Selling, general and administrative expenses	85,351	73,334
Income (loss) from operations	(1,945)	887
Interest expense, net	1,486	1,896
Loss before income taxes	(3,431)	(1,009)
Income tax expense	2,073	1,161
Net loss	<u>\$ (5,504)</u>	<u>\$ (2,170)</u>
<b>Net loss per share:</b>		
Basic	\$ (0.28)	\$ (0.11)
Diluted	\$ (0.28)	\$ (0.11)
<b>Weighted average number of shares outstanding:</b>		
Basic	20,005	19,449
Diluted	20,005	19,449
<b>Comprehensive loss:</b>		
Net loss	\$ (5,504)	\$ (2,170)
Foreign currency translation adjustment, net of taxes	972	(308)
Total comprehensive loss	<u>\$ (4,532)</u>	<u>\$ (2,478)</u>

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

**PFSWEB, INC. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**
**(In thousands, except share data)**

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Treasury Stock		Total Shareholders' Equity
	Shares	Amount				Shares	Amount	
Balance, December 31, 2018	19,294,296	\$ 19	\$ 155,455	\$ (107,773)	\$ (993)	33,467	\$ (125)	\$ 46,583
Net loss	—	—	—	(2,170)	—	—	—	(2,170)
Stock-based compensation expense	—	—	3,027	—	—	—	—	3,027
Exercise of stock options	9,500	—	14	—	—	—	—	14
Issuance of restricted stock	162,081	—	—	—	—	—	—	—
Taxes paid on behalf of employees for withheld shares	—	—	(304)	—	—	—	—	(304)
Foreign currency translation adjustment, net of taxes	—	—	—	—	(308)	—	—	(308)
Balance, December 31, 2019	19,465,877	\$ 19	\$ 158,192	\$ (109,943)	\$ (1,301)	33,467	(125)	\$ 46,842
Net loss	—	—	—	(5,504)	—	—	—	(5,504)
Stock-based compensation expense	—	—	10,785	—	—	—	—	10,785
Exercise of stock options	113,583	—	542	—	—	—	—	542
Issuance of shares under stock- based compensation awards	829,098	1	—	—	—	—	—	1
Taxes paid on behalf of employees for withheld shares	—	—	(1,275)	—	—	—	—	(1,275)
Foreign currency translation adjustment, net of taxes	—	—	—	—	972	—	—	972
Balance, December 31, 2020	20,408,558	\$ 20	\$ 168,244	\$ (115,447)	\$ (329)	33,467	\$ (125)	\$ 52,363

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



**PFSWEB, INC. AND SUBSIDIARIES**
**CONSOLIDATED STATEMENTS OF CASH FLOWS  
FOR THE YEARS ENDED DECEMBER 31  
(In thousands)**

	2020	2019
<b>Cash flows from operating activities:</b>		
Net loss	\$ (5,504)	\$ (2,170)
<b>Adjustments to reconcile net loss to net cash provided by operating activities:</b>		
Depreciation and amortization	8,666	10,367
Deferred income taxes	403	476
Stock-based compensation expense	10,785	3,027
Other	510	1,225
<b>Changes in operating assets and liabilities:</b>		
Accounts receivable	(7,328)	(894)
Related party receivable	(730)	—
Inventories	(315)	2,811
Prepaid expenses, other receivables and other assets	(1,957)	8,173
Operating leases	(757)	(7,112)
Trade accounts payable, deferred revenue, accrued expenses and other liabilities	(1,977)	(5,044)
Net cash provided by operating activities	<u>1,796</u>	<u>10,859</u>
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	(4,196)	(3,912)
Proceeds from sale of property and equipment	4	159
Net cash used in investing activities	<u>(4,192)</u>	<u>(3,753)</u>
<b>Cash flows from financing activities:</b>		
Net proceeds from issuance of common stock	542	14
Taxes paid on behalf of employees for withheld shares	(1,275)	(304)
Payments on finance lease obligations	(1,173)	(1,644)
Payments on revolving loan	(102,107)	(148,331)
Borrowings on revolving loan	105,407	143,031
Payments on other debt	(2,700)	(3,274)
Borrowings on other debt	1,517	1,105
Net cash provided by (used in) financing activities	<u>211</u>	<u>(9,403)</u>
Effect of exchange rates on cash and cash equivalents	502	(681)
Net decrease in cash and cash equivalents	<u>(1,683)</u>	<u>(2,978)</u>
Cash and cash equivalents, beginning of period	12,434	15,419
Restricted cash, beginning of period	214	207
Cash and cash equivalents and restricted cash, beginning of period	<u>12,648</u>	<u>15,626</u>
Cash and cash equivalents, end of period	10,751	12,434
Restricted cash, end of period	214	214
Cash and cash equivalents and restricted cash, end of period	<u>\$ 10,965</u>	<u>\$ 12,648</u>
<b>Supplemental cash flow information</b>		
Cash paid for income taxes	\$ 2,141	\$ 910
Cash paid for interest	1,391	1,917
<b>Non-cash investing and financing activities:</b>		
Property and equipment acquired under long-term debt and finance leases	4,676	2,956

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

## PFSWEB, INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### 1. Overview and Basis of Presentation

##### *Description of the Company*

PFSweb, Inc. and its subsidiaries are collectively referred to as the “Company”, “us”, “we” or “our”; “Supplies Distributors” collectively refers to Supplies Distributors, Inc. and its subsidiaries; and “PFSweb” refers to PFSweb, Inc. and its subsidiaries, excluding Supplies Distributors.

PFSweb is a global provider of omni-channel commerce solutions, including a broad range of technology, infrastructure and professional services, to major brand name companies and others seeking to optimize their supply chain and to enhance their online and traditional business channels and initiatives in the United States, Canada and Europe. PFSweb’s service offerings include website design, creation and integration, digital agency and marketing, e-commerce technologies, order management, customer care, logistics and fulfillment, financial management and professional consulting.

Supplies Distributors and PFSweb operate under distributor agreements with Ricoh Company Limited and Ricoh USA Inc., a strategic business unit within the Ricoh Family Group of Companies (collectively hereafter referred to as “RicoH”), under which Supplies Distributors acts as a distributor of various Ricoh products. Supplies Distributors sells its products in the United States, and Europe. Pursuant to agreements between PFSweb and Supplies Distributors, PFSweb provides transaction management and fulfillment services to Supplies Distributors.

The majority of Supplies Distributors’ revenue is generated by its sale of product purchased from Ricoh. Under the distributor agreements, which are subject to periodic renewals, Ricoh sells product to Supplies Distributors and reimburses Supplies Distributors for certain freight costs, direct costs incurred in passing on any price decreases offered by Ricoh to Supplies Distributors or its customers to cover price protection and certain special bids, the cost of products provided to replace defective product returned by customers and other certain expenses, as defined. Supplies Distributors can return to Ricoh product rendered obsolete by Ricoh engineering changes after customer demand ends. Ricoh determines when a product is obsolete. Ricoh and Supplies Distributors also have agreements under which Ricoh reimburses or collects from Supplies Distributors amounts calculated in certain inventory cost adjustments. Supplies Distributors passes through to customers marketing programs specified by Ricoh and administers such programs according to Ricoh guidelines.

Supplies Distributors also maintains agreements with certain additional clients where it operates as an agent for the resale of product between the client and the customer, and records product revenue net of cost of product revenue as a component of service fee revenue.

##### *Basis of Presentation*

The consolidated financial statements contained in this Annual Report were prepared in accordance with accounting principles generally accepted in the United States of America (“US GAAP”) for all periods presented and include the accounts of the Company and its majority owned subsidiaries over which the Company exercises control.

We reclassify certain prior year amounts, as applicable, to conform to the current year presentation.

##### *Recent Developments*

We continue to monitor the impact of the 2019 novel coronavirus, or COVID-19, on all aspects of our business. COVID-19 was declared a global pandemic by the World Health Organization on March 11, 2020 and the President of the United States declared the COVID-19 outbreak a national emergency. While the COVID-19 pandemic has not had a material adverse impact on our results of operations to date, the future impacts of the pandemic and any resulting economic impact are largely unknown and rapidly evolving. Beginning in late March 2020, we experienced an increase in demand from certain clients for our services in our PFS Operations segment, as more consumers around the world practiced social distancing, complied with stay-at-home restrictions and many retail stores were closed toward the end of the March 2020 quarter and into the June 2020 quarter. This generated increased volume of online ordering. This trend continued into the third quarter of 2020 but at a reduced rate from the March through June 2020 period and increased, again, as we entered our traditional peak season. However, going forward there could be significant volatility in customer demand and buying habits as the pandemic continues and the resulting adverse economic impacts continue or deepen. We have begun experiencing labor rate increases in certain of our markets for fulfillment activities. We believe this will continue and that this could impact our overall fulfillment related costs and staffing.

We have taken a number of precautionary measures designed to help minimize the risk of the spread of the virus to our employees and adjusted our operations wherever necessary to help ensure a safe environment for our staff across business functions. Beginning in April 2020, we received requests from a limited number of our clients to assist them with extended payment terms and/or pricing adjustments for a short time period. We have also experienced delays in certain limited projects and requests from certain clients to reduce current staffing on some of our projects. Prolonged delays or cancellations could have a material adverse impact to our overall business and financial results. As a result of the impact of COVID-19, many businesses have or will be experiencing short-term or long-term liquidity issues. It is possible that the COVID-19 pandemic, the restrictive measures taken by national and local governments to contain the virus and the resulting economic impact may cause disruptions and impact our business which may materially and adversely affect the Company's future results of operations, cash flows and financial position as well as that of our clients and customers.

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security ("CARES") Act was enacted. The CARES Act is an emergency economic stimulus package that includes spending and tax breaks to strengthen the United States' economy and fund a nationwide effort to curtail the effect of COVID-19. The Company has made use of the allowance granted under section 2302 of the CARES Act, which permits employers to forgo timely payment of the employer portions of Social Security and RRTA taxes that would otherwise be due from March 27 through December 31, 2020, without penalty or interest charges. Similarly, the UK and Belgium governments have granted businesses the option to defer the payment of certain value-added tax ("VAT") amounts. The Company has elected this option and we continue to examine the impact that the CARES Act and similar international statutes may have on our business.

## **2. Significant Accounting Policies**

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

All intercompany accounts and transactions have been eliminated in consolidation.

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

The preparation of consolidated financial statements and related disclosures in conformity with accounting principles generally accepted in the United States of America ("US GAAP") requires management to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and disclosure of contingent assets and liabilities. The recognition and allocation of certain revenues, cost of revenues, and selling, general and administrative expenses in these consolidated financial statements also require management estimates and assumptions.

Estimates and assumptions about future events and their effects cannot be determined with certainty. The Company bases its estimates on historical experience and various other assumptions believed to be applicable and reasonable under the circumstances. These estimates may change as new events occur, as additional information is obtained and as the operating environment changes. These changes have been included in the consolidated financial statements as soon as they became known. In addition, management is periodically faced with uncertainties, the outcomes of which are not within its control and will not be known for prolonged periods of time. Based on a critical assessment of accounting policies and the underlying judgments and uncertainties affecting the application of those policies, management believes the Company's consolidated financial statements are fairly stated in accordance with US GAAP and provide a fair presentation of the Company's financial position and results of operations.

### ***Revenue and Cost Recognition***

The Company derives revenue primarily from services provided under contractual arrangements with our clients or from the sale of products under our distributor agreements. The majority of our revenue is derived from contracts and projects that can span from a few months to three to five years.

The Company recognizes revenue when control of the promised goods or services is transferred to its customers, in an amount that reflects the consideration that we expect to receive in exchange for those goods or services. Control is transferred to a client or customer when, or as, the client or customer obtains control over that asset. The transaction price includes fixed and, in certain contracts, variable consideration.

Variable consideration contained within our contracts includes discounts, rebates, incentives, penalties and other similar items. When a contract includes variable consideration, the Company estimates the variable consideration to determine whether any of it needs to be constrained. The Company includes the variable consideration in the transaction price only to the extent that it is probable that a significant reversal of the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. We estimate variable consideration and constraints based on our review of the contract terms and conditions. Variable consideration and constraint amounts are the most

likely amounts based on our history with the customer. If no history is available, then we will recognize the most likely amount based on the range of possible consideration amounts. Variable consideration was not significant for the years ended December 31, 2020 and 2019. Variable consideration and constraints are updated at each reporting date.

The Company's billings for reimbursement of out-of-pocket expenses related to our Service Fee Revenues, consisting primarily of freight and shipping supplies, are included in pass-through revenues. Other items included in pass-through revenues include travel and certain third-party vendor expenses such as telecommunication charges. These other pass-through revenues are not deemed a material percentage of total revenues. In certain of our contracts, our clients elect to handle their shipping related costs directly with the carriers. Therefore, we present pass-through revenues separately, as we believe it provides better transparency to our core services.

Incremental costs to obtain a contract (such as sales commissions) are expensed when incurred when the amortization period is one year or less; otherwise, incremental contract costs are expensed over time as promised goods and services are transferred to a customer. Recurring operating costs for contracts with clients and customers are recognized as incurred. Certain eligible, nonrecurring costs incurred in the initial phases of our contracts are capitalized when such costs (1) relate directly to the contract, (2) generate or enhance resources that will be used in satisfying the performance obligation in the future and (3) are expected to be recovered. Capitalized amounts are monitored regularly for impairment.

The Company enters into contracts with clients and customers that contain multiple promises to transfer control of multiple products and/or services. To the extent a contract includes provisioning multiple products or services, judgment is applied to determine whether promised deliverables are distinct and are distinct in the context of the contract. If this criteria is not met, sales of different products or services are accounted for as a combined performance obligation. For arrangements with multiple distinct performance obligations, consideration is allocated among the performance obligations based on their relative standalone selling price. Standalone selling price is the price at which we would sell a promised good or service separately to the client or customer. Our warranties generally provide a client or customer with assurance that the related deliverable will function as the parties intended because it complies with agreed-upon specifications and is therefore not considered an additional performance obligation in the contract.

The Company may execute more than one contract or agreement with a single client or customer. The separate contracts or agreements may be viewed as one combined arrangement or separate agreements for revenue recognition purposes. In order to reach appropriate conclusions regarding whether such agreements should be combined, the Company evaluates whether the agreements were negotiated as a package with a single commercial objective, whether the amount of consideration to be paid in one agreement depends on the price and/or performance of another agreement, or whether the good or services promised in the agreements represent a single performance obligation. The conclusions reached can impact the identification of distinct performance obligations, allocation of the transaction price to each performance obligation and the timing of revenue recognition related to those arrangements.

For contracts recognized over time, we recognize the estimated loss to the extent the project has been completed based on actual hours incurred compared to the total estimated hours. A loss is recognized when the current estimate of the consideration we expect to receive, modified to include any variable consideration, is less than the current estimate of total costs for the contract.

#### *Service Fee Revenue*

The Company's service fee revenue primarily relates to our order to cash, fulfillment, customer care, consulting, design, digital marketing and technology services. The Company typically charges its service fee revenue on either a time and materials, fixed price, cost-plus a margin, a percent of shipped revenue, or retainer basis for professional services, or a per transaction basis, such as a per item basis for fulfillment services or a per labor hour basis for customer contact center services. Additional fees are billed for other services.

#### *Product Revenue*

Depending on the terms of the customer arrangement, product revenue and product cost is recognized at the point the customer gains control of the asset. The specific point in time when control transfers depends on the contract with the customer. Typically, our terms are Freight on Board ("FOB") Shipping point, which we believe to be indicative of when control is transferred. We permit our customers to return product. Product revenue is reported net of projected future returns. Future returns are estimated based on historical return information. Management also considers any other current information and trends in making estimates.

#### *Gross versus Net Revenue*

In instances where revenue is derived from product sales from a third-party, we record revenue on a gross basis when we are a principal to the transaction and net of costs when we are acting as an agent between the customer or client and the vendor. We are the principal and record revenue on a gross basis if we control a promised good or service before transferring that good or service to the customer. We are an agent and record revenue on a net basis for what we retain for agency services if our role is to arrange for another entity to control the promised goods or services.

#### *Practical expedients*

The standard allows entities to use several practical expedients, including the as-invoiced practical expedient, determining whether a significant financing component exists, treatment of sales and usage-based taxes, and the recognition of certain incremental costs of obtaining a contract with a client or customer. Contracts of less than a year with a financing component will be expensed in that period as a practical expedient. Our current contracts do not have a financing component. Commissions on contracts of less than one year will be expensed as a practical expedient. Commissions will be capitalized on contracts over one year. As of December 31, 2020 and 2019, we did not have any material commissions on contracts in excess of one year. We also present our revenues net of sales and usage-based tax as a practical expedient.

#### *Contract modifications*

Contract modifications are routine in our industry. For each modification, the Company assesses whether the modification changes the scope and or price of the original agreement and whether those changes are commensurate with stand-alone selling price. Based on the results of this assessment, the Company either accounts for the modification as a separate contract, as a change in the original contract, or as a termination of the old contract and creation of a new contract in accordance with Accounting Standards Codification (“ASC”) 606-10-25-12.

#### **Concentration of Business and Credit Risk**

During 2020, one client represented more than 10% of the Company’s consolidated total revenues which included services from both the PFS Operations and LiveArea business segments. The client represented \$38.9 million, or 11%, of consolidated total revenues. There were no other such concentrations in 2020. During 2019, two clients contributing to both the PFS Operations and LiveArea business segments represented more than 10% of the Company’s consolidated total revenues. As of December 31, 2020, two clients exceeded 10% of the Company’s total accounts receivable. As of December 31, 2019, one client exceeded 10% of the Company’s total accounts receivable.

#### **Cash and Cash Equivalents**

Cash equivalents are defined as short-term highly liquid investments with original maturities, when acquired, of three months or less. At times, the Company has cash balances in domestic bank accounts that exceed Federal Deposit Insurance Corporation insured limits. The Company has not experienced any losses related to these cash concentrations.

#### **Accounts Receivable**

The Company recognizes revenue and records trade accounts receivable, pursuant to the methods described above, when collectability is reasonably assured. Collectability is evaluated in the aggregate and on an individual customer or client basis taking into consideration payment due date, historical payment trends, current financial position, results of independent credit evaluations and payment terms. Related reserves are determined by either using percentages applied to certain aged receivable categories based on historical results, reevaluated and adjusted as additional information is received, or a specific identification method. After all attempts to collect a receivable have failed, the receivable is written off against the allowance for doubtful accounts.

#### **Other Receivables**

Other receivables primarily include amounts due from Ricoh for costs incurred by the Company under the distributor agreements and value added tax receivables.

#### **Inventories**

Inventories (all of which are finished goods) are stated at the lower of weighted average cost and net realizable value. The Company establishes inventory reserves based upon estimates of declines in values due to inventories that are slow moving or obsolete, excess levels of inventory or values assessed at lower than cost.

Supplies Distributors assumes responsibility for slow-moving inventory under its Ricoh distributor agreements, subject to certain termination rights, but has the right to return product rendered obsolete by engineering changes, as defined. In the event PFSweb, Supplies Distributors and Ricoh terminate the distributor agreements, the agreements provide for the parties to mutually agree on a plan of disposition of Supplies Distributors’ then existing inventory.

### **Property and Equipment**

The Company makes judgments and estimates in conjunction with the carrying value of property and equipment, including amounts to be capitalized, depreciation and amortization methods and useful lives. Property and equipment are stated at cost and are depreciated using the straight-line method over the estimated useful lives of the respective assets. Capitalized implementation costs are depreciated over the respective client expected performance period. Leasehold improvements are amortized over the shorter of the useful life of the related asset or the remaining lease term.

When events or changes in circumstances indicate that the carrying amount of our property and equipment might not be recoverable, the expected future undiscounted cash flows from the asset are estimated and compared with the carrying amount of the asset. If the sum of the estimated undiscounted cash flows is less than the carrying amount of the asset, an impairment loss is recorded. The impairment loss is measured by comparing the fair value of the asset with its carrying amount. Fair value is generally determined based on discounted cash flows or appraised values, as appropriate.

### **Leases**

We account for leases in accordance with ASC 842, Leases. Lease assets and liabilities are recognized at the commencement date of an arrangement where it is determined at inception that a lease exists. Lease assets represent the right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. These assets and liabilities are initially recognized based on the present value of lease payments over the lease term. As most of our leases do not provide an implicit rate, we use an incremental borrowing rate based on the information available at the lease commencement date to discount payments to the present value. Some of these leases contain rent escalation clauses either fixed or adjusted periodically for inflation or market rates that are factored into our determination of lease payments. We also have variable lease payments that do not depend on a rate or index, primarily for items such as common area maintenance and real estate taxes, which are recorded as variable costs when incurred. The lease asset excludes incentives and initial direct costs incurred. Lease terms include options to extend or terminate the lease when it is reasonably certain that we will exercise that option.

Our operating leases are included in operating lease right-of-use assets, current portion of operating lease liabilities and operating lease liabilities on the consolidated balance sheets. Our finance leases are included in property and equipment, long-term debt and finance lease obligations and current portion of long-term debt and finance lease obligations on the consolidated balance sheets. Leases with an initial term of 12 months or less are not recorded on the consolidated balance sheets. The expense for these short-term leases and operating leases is recognized on a straight-line basis over the lease term. We have lease agreements with lease and non-lease components and have elected to combine as a single lease component. In addition, we utilized the portfolio approach to group leases with similar characteristics and did not use hindsight to determine lease term.

### **Definite-Lived Intangible Assets**

The Company's definite-lived intangible assets are primarily comprised of non-compete agreements, trade names, customer relationships and developed technology.

Definite-lived intangible assets are amortized over their estimated useful life and only tested for impairment whenever events or circumstances indicate that the carrying amount of an asset may not be recoverable. An impairment loss would be recognized when the carrying amount of the asset exceeds the estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition. The impairment loss to be recorded would be the excess of the asset's carrying value over its fair value. Fair value is determined using a discounted cash flow analysis or other valuation technique.

### **Goodwill**

Goodwill represents the excess of the purchase price over the fair value of the identifiable net assets acquired. Goodwill and other intangible assets with indefinite lives are not amortized to operations, but instead are reviewed for impairment at least annually on October 1, or more frequently when there is an indicator of impairment. Goodwill impairment exists when a reporting unit's goodwill carrying value exceeds its implied fair value. The Company has no intangible asset with indefinite useful lives, other than goodwill.

Accounting Standards Update ("ASU") Topic 350: *Testing Goodwill for Impairment* ("ASU Topic 350") permits an entity to make a qualitative assessment of whether it is more likely than not that a reporting unit's fair value is less than its carrying amount before applying the one-step quantitative goodwill impairment test. When performing the qualitative analysis, an entity evaluates relevant events and circumstances, including but not limited to, macroeconomic conditions, industry and market conditions, overall financial performance, reporting unit specific events and entity specific events. If, after completing the qualitative analysis, an entity concludes that it is not more likely than not that the fair value of the reporting unit is less than its carrying amount, it would not be required to perform the one-step quantitative impairment test for that reporting unit.

In the event that the based on the results of the qualitative analysis, it is concluded that it is not more likely than not that the fair value of a reporting unit or indefinite-lived asset exceeds its carrying value, the one-step quantitative impairment test is performed. Under the quantitative test, the Company compares the fair value of the reporting unit with its carrying value, including goodwill. If the fair value of the reporting unit is less than its carrying value, the Company records an impairment charge equal to the excess of the carrying value over the related fair value. Fair value of the reporting unit is determined using a discounted cash flow analysis.

If the Company is required to perform the quantitative test described in the preceding paragraph, it would determine fair value using generally accepted valuation techniques, including discounted cash flows and market multiple analyses. These types of analyses contain uncertainties because they require management to make assumptions and to apply judgment to estimate industry economic factors and the profitability of future business strategies.

The Company's valuation methodology for assessing impairment would require management to make judgments and assumptions based on historical experience and projections of future operating performance. If these assumptions differ materially from future results, the Company may record impairment charges in the future.

#### ***Foreign Currency Translation and Transactions***

The functional currency of each of the Company's foreign subsidiaries is local currency. Assets and liabilities are translated at exchange rates in effect at the end of the period and income and expense items are translated at the average exchange rates on a monthly basis. Translation adjustments are accumulated and reported as a component of accumulated other comprehensive income (loss) in the consolidated statements of shareholders' equity.

The Company includes currency gains and losses on short-term intercompany advances in the determination of net income and loss. The Company reports gains and losses on intercompany foreign currency transactions that are of a long-term investment nature as a component of accumulated other comprehensive income (loss) in the consolidated statements of shareholders' equity.

#### ***Stock-Based Compensation***

The Company uses stock-based compensation, including stock options, deferred stock units and other market and performance stock-based awards to provide long-term performance incentives for its executives, key employees and non-employee directors. From the service inception date to the grant date, the Company recognizes compensation cost for all share-based payments based on the reporting date fair value of the award. After the grant date, compensation cost is measured based on the grant date fair value. Depending on the conditions associated with the vesting of the award, compensation cost is recognized on a straight-line or graded basis, net of estimated forfeitures, over the requisite service period of each award. The Company records compensation cost as a component of selling, general and administrative expenses in the consolidated statements of operations.

The Company estimates the fair value of each option grant on the date of grant using the Black-Scholes option-pricing model and estimates the compensation cost for certain of the awards that have a market condition using a Monte-Carlo simulation. The estimated fair value for awards involves assumptions for expected dividend yield, stock price volatility, risk-free interest rates and the expected life of the award.

#### ***Income Taxes***

Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. Valuation allowances are established when necessary to reduce deferred tax assets to the amount more likely than not to be realized.

The Company recognizes interest and penalties related to certain tax positions in income tax expense and monitors uncertain tax positions and recognizes tax benefits only when management believes the relevant tax positions would more likely than not be sustained upon examination.

#### ***Fair Value of Financial Instruments***

In accordance with ASC 825, *Financial Instruments*, fair value is determined utilizing a hierarchy of valuation techniques. The three levels of the fair value hierarchy are as follows:

Level 1: Observable inputs such as quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2: Inputs, other than quoted prices, that are observable for the asset or liability, either directly or indirectly; these include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.

Level 3: Unobservable inputs that reflect the reporting entity's own assumptions.

The carrying value of the Company's financial instruments, which include cash and cash equivalents, accounts receivable, other receivables, trade accounts payable and debt, approximate their fair values at December 31, 2020 and 2019 based on short terms to maturity or current market prices and interest rates or observable inputs such as quoted prices in active markets.

#### *Nonrecurring Fair Value Measurements*

The purchase price of business acquisitions is allocated to the tangible and identifiable intangible assets acquired and liabilities assumed based on their estimated fair values on the acquisition dates, with any excess recorded as goodwill. The Company utilizes Level 3 inputs in the determination of the initial fair value of assets and liabilities. Non-financial assets such as goodwill, intangible assets, software development costs and property and equipment are subsequently measured at fair value when there is an indicator of impairment and recorded at fair value only when impairment is recognized.

#### **Impact of Recently Issued Accounting Standards**

##### *Pronouncements Recently Adopted*

In January 2017, the FASB issued ASU No. 2017-04, "*Intangibles-Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*" ("ASU 2017-04"), which removes Step 2 of the goodwill impairment test. A goodwill impairment will now be determined by the amount by which a reporting unit's carrying value exceeds its fair value, not to exceed the carrying amount of goodwill. ASU 2017-04 is effective for annual reporting periods, and interim periods therein, beginning after December 15, 2022, with early adoption permitted. The Company elected to adopt this new guidance early, beginning on January 1, 2020. The adoption of ASU 2017-04 did not have a material impact on our consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-15 "*Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract; Disclosures for Implementation Costs Incurred for Internal-Use Software and Cloud Computing Arrangements*" ("ASU 2018-15"), which aligns the accounting for implementation costs incurred in a hosting arrangement that is a service contract with the accounting for implementation costs incurred to develop or obtain internal-use software under ASC Subtopic 350-40, in order to determine which costs to capitalize and recognize as an asset. ASU 2018-15 is effective for annual reporting periods, and interim periods within those years, beginning after December 15, 2019, and can be applied either prospectively to implementation costs incurred after the date of adoption or retrospectively to all arrangements. We have adopted ASU 2018-15 on January 1, 2020 on a prospective basis. The adoption of ASU 2018-15 did not have a material impact on our consolidated financial statements.

##### *Pronouncements Not Yet Adopted*

In June 2016, the FASB issued ASU 2016-13, "*Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*," ("ASU 2016-13") which requires the measurement and recognition of expected credit losses for financial assets held at amortized cost. ASU 2016-13 replaces the existing incurred loss impairment model with an expected loss methodology, which will result in more timely recognition of credit losses. ASU 2016-13 is effective for annual reporting periods, and interim periods within those years, beginning after December 15, 2019 for all public entities, excluding smaller reporting companies, and after December 15, 2022 for smaller reporting companies. It requires a cumulative effect adjustment to the balance sheet as of the beginning of the first reporting period in which the guidance is effective. We will adopt ASU 2016-13 on January 1, 2023. We are currently in the early phase of evaluating the impact of the adoption of ASU 2016-13 on our consolidated financial statements.

### **3. Revenue from Contracts with Clients and Customers**

#### **Performance Obligations and Revenue Recognition Timing**

A performance obligation is a promise in a contract to transfer a distinct good or service to the client or customer and is the unit of account in ASC 606. A contract's transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied.

Our performance obligations for the PFS Operations segment ("PFS Operations"), includes order to cash, fulfillment and customer care services and for the LiveArea Professional Services segment ("LiveArea"), include consulting, design, digital marketing and technology services. For arrangements with multiple distinct performance obligations, we allocate consideration



among the performance obligations based on their relative standalone selling price. Standalone selling price is the price at which we would sell a promised good or service separately to our client and customers.

We typically price our professional services contracts on either a time and materials, fixed-price or a cost-plus margin basis.

For fixed-price arrangements, we typically recognize revenue based on the input method, as we believe that hours expended over time proportionately, based on actual hours to budgeted hours during the period, provides the most relevant measure of progress for these contracts. We measure the progress for our fixed-price arrangements using a proportional performance calculation based on the actual hours worked each month as a percentage of the total estimated project hours because it best depicts the transfer of control to the customer which occurs as we deliver the services and incur costs on our contracts. For time and materials contracts, we recognize revenue monthly based on the actual hours worked at the labor rates by job category and cost of materials plus margin. We recognize revenue for a performance obligation satisfied over time only if we can reasonably measure our progress toward complete satisfaction of the performance obligation. In some circumstances (for example, in the early stages of a contract), we may not be able to reasonably measure the outcome of a performance obligation, but we expect to recover the costs incurred in satisfying the performance obligation. In those circumstances, we shall recognize revenue only to the extent of the costs incurred until such time that we can reasonably measure the outcome of the performance obligation.

Contracts that are billed on a time and materials basis typically are structured such that the amount the company bills at each point in time corresponds directly with the value of our performance to date. We have elected the 'as-invoiced' practical expedient for these contracts.

In addition, PFS Operations has certain product revenue where it acts as a reseller in which we have determined we do not have ultimate control of the provisioning of the performance obligation. For these agreements, we recognize net revenue at a point in time when control transfers to the customer, typically at FOB shipping point.

Remaining performance obligations represent the transaction price of firm orders for which work has not yet been performed. This amount does not include 1) contracts that are less than one year in duration, 2) contracts for which we recognize revenue based on the right to invoice for services performed, or 3) variable consideration allocated entirely to a wholly unsatisfied performance obligation. Much of our revenue qualifies for one of these exemptions. As of December 31, 2020, the aggregate amount of the transaction price allocated to remaining performance obligations for contracts with an original expected duration of one year or more was \$7.8 million. We expect to recognize revenue on approximately 89% of the remaining performance obligations in 2021 and 100% through 2022.

#### **Contract Assets and Contract Liabilities**

Contract assets primarily relate to costs to fulfill assets capitalized for PFS Operations implementation services. Costs to Fulfill assets related to deferred costs, which are included within other current assets, other assets and to software development costs, which are included within property and equipment in our consolidated balance sheets. The contract liabilities primarily relate to the advance consideration received from clients for contracts, including amounts received for implementation services which are not distinct performance obligations.

Our payment terms vary by the type and location of our clients and the type of services offered. The term between invoicing and when payment is due is generally not significant.

Contract balances consisted of the following (in thousands):

	December 31, 2020	December 31, 2019
<b>Contract Assets</b>		
Costs to Fulfill	5,659	4,875
<b>Total Contract Assets</b>	<u>\$ 5,659</u>	<u>\$ 4,875</u>
<b>Contract Liabilities</b>		
Accrued Contract Liabilities	\$ 1,067	\$ 1,806
Deferred Revenue	6,456	7,456
<b>Total Contract Liabilities</b>	<u>\$ 7,523</u>	<u>\$ 9,262</u>

Changes in costs to fulfill contract assets during the period increased \$0.8 million from December 31, 2019 to December 31, 2020, primarily due to an increase of approximately \$5.3 million from new projects, offset by a decrease of approximately \$4.5 million due to amortization and recognition of costs in the year ended December 31, 2020. Changes in costs to fulfill contract assets during the period from January 1, 2019 to December 31, 2019 was a decrease of \$0.3 million, primarily due

to an increase of approximately \$6.1 million from new projects, offset by approximately \$6.4 million of amortization and recognition of costs in the year ended December 31, 2019.

Changes in contract liabilities during the period decreased \$1.7 million in our contract liabilities from December 31, 2019 to December 31, 2020, primarily due to an increase of approximately \$11.8 million from new projects, offset by a decrease of approximately \$13.5 million of amortization and recognition of revenue in the year ended December 31, 2020. Contract losses for the year ended December 31, 2020 and December 31, 2019 were not material. Contract liabilities during the period from January 1, 2018 to December 31, 2019 decreased by \$0.5 million in our contract liabilities, primarily due to an increase of approximately \$10.8 million from new projects, offset by a decrease of approximately \$11.3 million due to amortization and recognition of revenue in the year ended December 31, 2019.

The timing of revenue recognition, billings and cash collections results in billed accounts receivable, unbilled receivables and customer advances and deposits (contract liabilities) on the consolidated balance sheet.

Changes in the contract asset and liability balances during the years ended December 31, 2020 and 2019 were not materially impacted by any other factors.

The following table presents our revenues, excluding sales and usage-based taxes, disaggregated by revenue source (in thousands):

	Year Ended December 31, 2020			Year Ended December 31, 2019		
	PFS Operations	LiveArea Professional Services	Total	PFS Operations	LiveArea Professional Services	Total
<b>Revenues:</b>						
Service fee revenue	\$ 174,868	\$ 82,793 (1)	\$ 257,661	\$ 139,490	\$ 74,892 (1)	\$ 214,382
Product revenue, net	22,865	—	22,865	26,613	—	26,613
Pass-through revenue	58,874	3,105	61,979	50,296	2,731	53,027
<b>Total revenues</b>	<b>\$ 256,607</b>	<b>\$ 85,898</b>	<b>\$ 342,505</b>	<b>\$ 216,399</b>	<b>\$ 77,623</b>	<b>\$ 294,022</b>

(1) Includes \$1.0 million and no related party revenue as of December 31, 2020 and December 31, 2019, respectively.

The following table presents our revenues, excluding sales and usage-based taxes, disaggregated by timing of revenue recognition (in thousands):

	Year Ended December 31, 2020			Year Ended December 31, 2019		
	PFS Operations	LiveArea Professional Services	Total	PFS Operations	LiveArea Professional Services	Total
<b>Revenues:</b>						
Over time	\$ 233,742	\$ 85,898 (1)	\$ 319,640	\$ 189,786	\$ 76,645 (1)	\$ 266,431
Point-in-time	22,865	—	22,865	26,613	978	27,591
<b>Total revenues</b>	<b>\$ 256,607</b>	<b>\$ 85,898</b>	<b>\$ 342,505</b>	<b>\$ 216,399</b>	<b>\$ 77,623</b>	<b>\$ 294,022</b>

(1) Includes \$1.0 million and no related party revenue as of December 31, 2020 and December 31, 2019, respectively.

The following table presents our revenues, excluding sales and usage-based taxes, disaggregated by region (in thousands):

	Year Ended December 31, 2020			Year Ended December 31, 2019		
	PFS Operations	LiveArea Professional Services	Total	PFS Operations	LiveArea Professional Services	Total
<b>Revenues by region:</b>						
North America	\$ 202,176	\$ 74,514 (1)	\$ 276,690	\$ 178,760	\$ 68,684 (1)	\$ 247,444
Europe	54,431	11,384	65,815	37,639	8,939	46,578
<b>Total revenues</b>	<b>\$ 256,607</b>	<b>\$ 85,898</b>	<b>\$ 342,505</b>	<b>\$ 216,399</b>	<b>\$ 77,623</b>	<b>\$ 294,022</b>

(1) Includes \$1.0 million and no related party revenue as of December 31, 2020 and December 31, 2019, respectively.

#### 4. Property and Equipment

The components of property and equipment as of December 31, 2020 and 2019 are as follows (in thousands):

	December 31,		Depreciable Life
	2020	2019	
Purchased and capitalized software costs	\$ 36,371	\$ 37,680	1-10 years
Furniture, fixtures and equipment	29,512	28,377	3-10 years
Computer equipment	16,199	15,034	3 years
Leasehold improvements	17,795	17,201	3-10 years
In-process assets	2,115	1,457	
	<u>101,992</u>	<u>99,750</u>	
Less-accumulated depreciation and amortization	(82,814)	(81,314)	
Property and equipment, net	<u>\$ 19,178</u>	<u>\$ 18,436</u>	

Depreciation and amortization expense related to property and equipment, excluding finance leases, for the years ended December 31, 2020 and 2019 was \$7.3 million and \$8.3 million, respectively.

The Company's property and equipment held under finance leases amount to approximately \$0.9 million and \$1.9 million, net of accumulated amortization of approximately \$2.3 million and \$2.5 million, at December 31, 2020 and 2019, respectively. Depreciation and amortization expense related to finance leases for the years ended December 31, 2020 and 2019 was \$0.9 million and \$1.4 million, respectively.

### 5. Goodwill and Identifiable Intangibles, Net

During 2020 goodwill increased by \$0.2 million and increased by \$0.3 million in 2019 due to the impact of foreign currency translation. The Company's annual goodwill impairment test as of October 1, 2020 was performed for all reporting units by completing the qualitative assessment to determine whether it is more likely than not the fair value of a reporting unit is less than its carrying amount. We determined that it was not more likely than not that the fair value of a reporting unit was less than its carrying amount and, therefore, did not result in an impairment as of December 31, 2020. We have determined that our reporting units are equivalent to our operating segments. The Company's goodwill by reporting unit was \$23.2 million and \$23.2 million for our LiveArea Professional Services segment and \$22.4 million and \$22.2 million for our PFS Operations segment at December 31, 2020 and December 31, 2019, respectively.

The following table presents the gross carrying value and accumulated amortization for identifiable intangibles (in thousands):

	December 31, 2020			December 31, 2019			Estimated Useful Life from Acquisition
	Gross Carrying Value	Accumulated Amortization	Net Carrying Value	Gross Carrying Value	Accumulated Amortization	Net Carrying Value	
Trade names	\$ 1,250	\$ (1,250)	\$ —	\$ 1,250	\$ (1,250)	\$ —	2.25 - 2.5 years
Non-compete agreements	571	(571)	—	570	(570)	—	1 - 3.5 years
Leasehold	45	(45)	—	45	(45)	—	2.5 years
Customer relationships	10,171	(9,506)	665	10,120	(8,989)	1,131	1.6 - 9 years
Developed technology	1,532	(1,532)	—	1,509	(1,509)	—	2.5 - 3 years
Other intangibles	494	(494)	—	492	(488)	4	9 years
Total definite-lived identifiable intangible assets	<u>\$ 14,063</u>	<u>\$ (13,398)</u>	<u>\$ 665</u>	<u>\$ 13,986</u>	<u>\$ (12,851)</u>	<u>\$ 1,135</u>	

### Definite-Lived Identifiable Intangible Asset Amortization

The changes in the net carrying values of identifiable intangible assets during 2020 and 2019 were primarily due to amortization expense of \$0.5 million and \$0.7 million, respectively, as well as the impact of foreign currency translation. Amortization expense is included in selling, general and administrative expenses in 2020 and 2019, respectively, in the consolidated statements of operations. The estimated amortization expense for each of the next five years is as follows (in thousands):

2021	\$	282
2022		197
2023		138
2024		48
2025		—

## 6. Inventory Financing

Supplies Distributors has a short-term credit facility with IBM Credit LLC (“IBM Credit Facility”) to finance its purchase and distribution of Ricoh products in the United States, providing financing for eligible Ricoh inventory and certain receivables up to \$7.5 million, as per the amended agreement. The agreement has no stated maturity date and provides either party the ability to exit the facility following a 90 day notice.

Given the structure of this facility and as outstanding balances, which represent inventory purchases, are repaid within twelve months, we have classified the outstanding amounts under this facility, which were \$3.6 million and \$3.0 million as of December 31, 2020 and December 31, 2019, respectively, as trade accounts payable in the consolidated balance sheets. As of December 31, 2020, Supplies Distributors had \$0.1 million of available credit under this facility. The credit facility contains cross default provisions, various restrictions upon the ability of Supplies Distributors to, among other things, merge, consolidate, sell assets, incur indebtedness, make loans and payments to related parties (including entities directly or indirectly owned by PFSweb, Inc.), provide guarantees, make investments and loans, pledge assets, make changes to capital stock ownership structure and pay dividends. The credit facility also contains financial covenants, such as annualized revenue to working capital, net profit after tax to revenue and total liabilities to tangible net worth, as defined, and is secured by certain of the assets of Supplies Distributors, as well as a collateralized guaranty of PFSweb. Additionally, PFSweb is required to maintain a minimum Subordinated Note receivable balance from Supplies Distributors of \$1.0 million, as per the amended agreement. Borrowings under the credit facility accrue interest, after a defined free financing period, at prime rate plus 0.5%, which resulted in a weighted average interest rate of 3.75% and 5.25% as of December 31, 2020 and December 31, 2019, respectively. As of December 31, 2020, the Company was in compliance with all financial covenants.

Pursuant to IBM Credit Facility, Supplies Distributors is restricted from making any distributions to PFSweb if, after giving affect thereto, Supplies Distributors’ would be in noncompliance with its financial covenants. Supplies Distributors has received lender approval to pay up to approximately \$0.6 million of dividends in 2021. Supplies Distributors paid no dividends to PFSweb in 2020 and \$1.8 million in 2019, which eliminate upon consolidation.

## 7. Debt Obligations

Outstanding debt and finance lease obligations consist of the following (in thousands):

	December 31,	
	2020	2019
U.S. Credit Agreement:		
Revolving loan	\$ 33,500	\$ 30,200
Equipment loan	8,035	5,426
Debt issuance costs	(224)	(303)
Finance leases	1,056	2,177
Other	120	300
Total	42,487	37,800
Less current portion of long-term debt	3,414	2,971
Long-term debt, less current portion	\$ 39,073	\$ 34,829

### U.S. Credit Agreement

In August 2015, PFSweb, Inc. and its U.S. subsidiaries entered into a credit agreement (“Credit Agreement”) with Regions Bank, as agent for itself and one or more future lenders (the “Lenders”). Under the Credit Agreement, and subject to the terms set forth therein, the Lenders provided us with a revolving loan facility for up to \$32.5 million and a term loan facility for up to \$30 million. Borrowings under the Credit Agreement accrued interest at a variable rate based on prime rate or Libor, plus an applicable margin.

On November 1, 2018, we entered into Amendment No.1 to our Credit Agreement with Regions Bank (the “Amended Facility”). The Amended Facility provides for an increase in availability of our revolving loans to \$60.0 million, with the ability

for a further increase of \$20.0 million to \$80.0 million and the elimination of the term loan. Amounts outstanding under the term loan were reconstituted as revolving loans. The Amended Facility also extends the maturity date to November 1, 2023.

As of December 31, 2020, we had \$14.2 million of available credit under the Amended Facility. As of December 31, 2020 and 2019, the weighted average interest rate on the revolving loan facility was 2.52% and 3.96%, respectively. In connection with the Amended Facility, the Company paid \$0.3 million of fees in 2018, which are being amortized through the life of the Amended Facility and are reflected as a net reduction in debt. The Amended Facility is secured by a lien on substantially all of the assets of Company and its U.S. subsidiaries and a pledge of 65% of the shares of certain of our foreign subsidiaries. The Amended Facility contains cross default provisions, various restrictions upon the Company's ability to, among other things, merge, consolidate, sell assets, incur indebtedness, make loans and payments to subsidiaries, affiliates and related parties, make capital expenditures, make investments and loans, pledge assets, make changes to capital stock ownership structure, as well as financial covenants, as defined, of a minimum consolidated fixed charge ratio and a maximum consolidated leverage ratio.

### **Debt Covenants**

To the extent the Company or any of its subsidiaries fail to comply with its covenants applicable to its debt or inventory financing obligations, including the periodic financial covenant requirements, such as profitability and cash flow and required level of shareholders' equity or net worth (as defined), the Company would be required to obtain a waiver from the lender or the lender would be entitled to accelerate the repayment of any outstanding credit facility obligations and exercise all other rights and remedies, including sale of collateral and enforcement of payment under the Company parent guarantee. Any acceleration of the repayment of the credit facilities may have a material adverse impact on the Company's financial condition and results of operations and no assurance can be given that the Company would have the financial ability to repay all of such obligations. As of December 31, 2020, the Company was in compliance with all debt covenants.

### **Debt Maturities**

The Company's aggregate maturities of debt subsequent to December 31, 2020 are as follows, excluding \$0.2 million in debt issuance costs that reduce the carrying amount of the debt (in thousands):

Years ended December 31,		
2021	\$	2,521
2022		1,748
2023		35,023
2024		1,333
2025		866
Total	\$	<u>41,491</u>

## **8. Stock and Stock Options**

### **Preferred Stock Purchase Rights**

On June 8, 2000, the Company's Board of Directors declared a dividend distribution of one preferred stock purchase right (a "Right") for each share of the Company's common stock outstanding on July 6, 2000 and each share of common stock issued thereafter. Each Right entitles the registered shareholders to purchase from the Company one one-thousandth of a share of preferred stock at an exercise price of \$65, subject to adjustment. The Rights are not currently exercisable but would become exercisable if certain events occurred relating to a person or group acquiring or attempting to acquire 20 percent or more of the Company's outstanding shares of common stock. The Rights Agreement expires 30 days after the Company's 2021 Annual Meeting unless continuation of the Rights Agreement is approved by the stockholders of the Company at the 2021 Annual Meeting.

### **Stock Compensation Plans**

The Company has an Employee Stock and Incentive Plan (the "Employee Plan"), as amended and restated, under which an aggregate of 10,442,340 shares of common stock have been authorized for issuance. The Employee Plan provides for the granting of incentive awards to directors, executive management, key employees and outside consultants of the Company in a variety of forms of equity-based incentive compensation, such as the award of an option, stock appreciation right, restricted stock award, restricted stock unit, deferred stock unit, among other stock-based awards. The Company has historically issued service-based restricted stock and unit awards, performance-based and market-based stock and unit awards (collectively "Restricted Shares") and stock options. The Company uses newly issued shares of common stock to satisfy awards under the Plan.

The Company issues Restricted Shares to the Company's executives and senior management, pursuant to which such employees are eligible to receive future grants of shares of the Company's stock subject to various vesting and/or performance criteria. The weighted average fair value per share of Restricted Shares granted during the years ended December 31, 2020 and 2019 was \$5.45 and \$3.13, respectively. The total fair value of Restricted Shares vested under the Employee Plans was \$7.7 million and \$1.3 million during the years ended December 31, 2020 and 2019, respectively.

The underlying stock certificates for the Restricted Shares that vested December 31, 2020 are expected to be issued during the quarter ending March 31, 2021. The underlying stock certificates for the Restricted Shares that vested December 31, 2019 were issued during the quarters ended March 31, 2020 and June 30, 2020.

Total stock-based compensation expense was \$10.8 million and \$3.0 million for the years ended December 31, 2020 and 2019, respectively, and was included as a component of selling, general and administrative expenses in the consolidated statements of operations. As of December 31, 2020, there is \$4.2 million of total unrecognized compensation costs related to non-vested share-based compensation arrangements granted under the Plan, which is expected to be recognized over a remaining weighted average period of approximately 2.3 years. This expected cost does not include the impact of any future stock-based compensation awards.

As of December 31, 2020, there were 1,290,569 shares available for future grants under the Plan. Each stock option or stock appreciation right award granted reduces the total shares available for grant by one share, while each award granted other than in the form of a stock option or stock appreciation right reduces the shares available for grant by 1.22 shares.

#### Stock Options

The rights to purchase shares under employee stock option agreements issued under the Plan typically vest over a three year period, one-twelfth each quarter. Stock options must be exercised within 10 years from the date of grant. Stock options are generally issued such that the exercise price is equal to the market value of the Company's common stock at the date of grant.

The following tables summarize stock option activity under the Plans:

	Shares	Price Per Share	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (in years)	Aggregate Intrinsic Value (in millions)
Outstanding, December 31, 2019	1,378,550	\$2.39 - \$14.66	\$ 6.65		
Granted	5,500	\$6.69	\$ 6.69		
Exercised	(113,583)	\$2.39 - \$6.23	\$ 4.77		
Canceled	(149,750)	\$2.72 - \$14.66	\$ 7.27		
Outstanding, December 31, 2020	1,120,717	\$2.54 - \$14.66	\$ 6.76		
Exercisable, December 31, 2020	843,719	\$2.54 - \$14.66	\$ 7.25	4.7	\$ 0.8
Exercisable and expected to vest, December 31, 2020	1,063,967	\$2.54 - \$14.66	\$ 6.83	5.5	\$ 1.2

The weighted average fair value per share of options granted during the years ended December 31, 2020 and 2019 was \$3.51 and \$1.33, respectively. The total intrinsic value of options exercised under the Stock Option Plans was \$0.3 million and \$0.03 million during the years ended December 31, 2020 and 2019, respectively.

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions used for grants of options under the Plans:

	Year Ended December 31,	
	2020	2019
Expected dividend yield	—	—
Expected stock price volatility	56%	40% - 43%
Risk-free interest rate	0.4%	1.7% - 2.6%
Expected life of options (years)	6	6

The Black-Scholes option valuation model requires the input of highly subjective assumptions, including the expected life of the stock-based award and stock-price volatility. The assumptions listed above represent management's best estimates, but

these estimates involve inherent uncertainties and the application of management judgment. As a result, if other assumptions had been used, the Company's recorded stock-based compensation expense could have been different. In addition, the Company is required to estimate the expected forfeiture rate and only recognize expense for those shares expected to vest. If the Company's actual forfeiture rate is materially different from its estimate, the share-based compensation expense could be materially different. The Company calculates the expected stock price volatility using the Company's historical stock price during the expected term immediately preceding a stock option grant date. The Company has not paid dividends in the past and does not anticipate paying dividends in the future. The Company uses the risk-free interest rates of United States Treasury securities for a comparable term as the expected life of a stock option. The expected life of options has been computed using the simplified method, which the Company uses as it does not believe it has established a consistent exercise pattern to accurately estimate the expected term of stock options.

#### *Service-Based Restricted Stock and Unit Awards*

The Company's service-based restricted stock and unit awards are valued at the quoted market price of the Company's common stock as of the date of grant and vest over a range of two to four years. Shares that do not vest on a scheduled vesting date due to a failure to satisfy vesting or performance criteria are forfeited and do not vest in future periods.

The following table summarizes the service-based restricted stock and unit award activity for the year ended December 31, 2020:

	Shares	Weighted Average Grant Date Fair Value per Share
Unvested restricted stock at December 31, 2019	129,142	\$ 5.22
Granted	705,658	\$ 5.85
Vested	(445,993)	\$ 4.57
Canceled	(35,748)	\$ 3.81
Unvested restricted stock at December 31, 2020	<u>353,059</u>	<u>\$ 5.70</u>

#### *Performance-Based Restricted Stock and Unit Awards*

Pursuant to the Employee Plan, the Company grants restricted stock and unit awards that vest upon reaching certain performance targets and individual performance goals, which historically have been based on the Company's financial performance, Company operating income and other financial metrics for the current and/or future years. Such awards generally are subject to annual vesting from three to four years based upon continued employment and the achievement of the defined performance criteria. If the target set forth in the award agreement is not met, none of the related shares will vest and any compensation expense previously recognized will be reversed. The actual number of shares that will ultimately vest is dependent upon achieving the performance condition or other conditions set forth in the award agreement. The Company recognizes stock-based compensation expense related to performance awards based upon our determination of the likelihood of achieving the performance target or targets at each reporting date, net of estimated forfeitures.

The following table summarizes the performance-based restricted stock and unit award activity for the year ended December 31, 2020:

	Shares	Weighted Average Grant Date Fair Value per Share
Unvested restricted stock at December 31, 2019	14,331	\$ 8.95
Granted	1,519,533	\$ 4.88
Vested	(914,056)	\$ 5.00
Canceled	(164,485)	\$ 5.00
Unvested restricted stock at December 31, 2020	<u>455,323</u>	<u>\$ 4.43</u>

#### *Market-Based Restricted Stock and Unit Awards*

Pursuant to the Employee Plan, the Company grants restricted stock and unit awards that vest upon the achievement of certain defined total stockholder return targets using the companies in the Russell Micro Cap Index as a comparative group for current and/or future years. Such awards generally are subject to annual vesting from three to four years based upon continued employment and the achievement of the defined performance criteria. The actual number of shares that will ultimately vest is dependent upon achieving the performance condition or other conditions set forth in the award agreement. Shares that do not vest

on a scheduled vesting date due to a failure to satisfy vesting criteria are forfeited and do not vest in future periods. The Company reverses previously recognized compensation cost for market-based restricted stock unit awards only if the requisite service is not rendered.

The following table summarizes the market-based restricted stock and unit award activity for the year ended December 31, 2020:

	Shares	Weighted Average Grant Date Fair Value per Share
Unvested restricted stock at December 31, 2019	77,087	\$ 6.59
Granted	375,412	\$ 7.02
Vested	(131,711)	\$ 8.13
Canceled	(77,634)	\$ 6.38
Unvested restricted stock at December 31, 2020	<u>243,154</u>	<u>\$ 6.49</u>

The fair value of each market-based restricted stock and unit award grant is estimated on the date of grant using a Monte-Carlo simulation with the following assumptions used for grants under the Plans:

	Year Ended December 31, 2020
Expected dividend yield	—
Expected stock price volatility	68.2%
Risk-free interest rate	0.2%
Expected term (years)	3
Weighted average grant date fair value	\$6.68

There were no market-based grants under the Plans in 2019.

#### Stock Units

Each non-employee Director of the Company's Board of Directors (the "Board") receives a quarterly retainer (the "Retainer"), payable on or about the first day of each quarter, through the issuance of an equity-based award (an "Award") under the Employee Plan in the form of a Deferred Stock Unit (a "DSU"). During 2020 and 2019, the Retainer was \$30,000. The number of DSUs is determined by dividing the Retainer by the immediately preceding closing price of the Common Stock on the grant date. Each DSU represents the right to receive an equal number of shares of Common Stock upon the retirement, resignation or termination of service from the Board.

The following table summarizes the DSU activity for the year ended December 31, 2020:

	Shares	Weighted Average Grant Date Fair Value per Share
Unvested deferred stock at December 31, 2019	451,989	\$ 6.86
Granted	174,824	\$ 4.29
Vested	(193,028)	\$ 6.32
Unvested deferred stock at December 31, 2020	<u>433,785</u>	<u>\$ 6.06</u>

## 9. Income Taxes

The consolidated income (loss) from operations before income taxes, by domestic and foreign entities, is as follows (in thousands):

	Year Ended December 31,	
	2020	2019
Domestic	\$ (5,687)	\$ 3,157
Foreign	2,256	(4,166)
Total	<u>\$ (3,431)</u>	<u>\$ (1,009)</u>



A reconciliation of the difference between the expected income tax expense (benefit) from operations at the U.S. federal statutory corporate tax rate of 21% and the Company's effective tax rate is as follows (in thousands):

	Year Ended December 31,	
	2020	2019
Income tax benefit computed at statutory rate	\$ (721)	\$ (212)
Items not deductible for tax purposes	226	297
Change in valuation allowance	1,508	514
State taxes	564	443
Net operating loss adjustments	—	246
Prior year return-to-provision true-up	16	(446)
Other	480	319
Provision for income taxes	\$ 2,073	\$ 1,161

Current and deferred income tax expense (benefit) is summarized as follows (in thousands):

	December 31,	
	2020	2019
<b>Current</b>		
Domestic	\$ —	\$ (53)
State	568	443
Foreign	1,102	295
Total Current	1,670	685
<b>Deferred</b>		
Domestic	526	568
State	(308)	12
Foreign	185	(104)
Total Deferred	403	476
Provision for income taxes	\$ 2,073	\$ 1,161

The components of the deferred tax asset (liability) are as follows (in thousands):

	Year Ended December 31,	
	2020	2019
<b>Deferred tax assets:</b>		
Allowance for doubtful accounts	\$ 302	\$ 226
Inventory reserve	22	66
Property and equipment	1,924	1,465
Accrued expenses	870	858
Deferred revenue	305	847
State tax - deferred	1,327	1,914
Net operating loss carryforwards	15,128	13,732
Other	5,836	4,747
	25,714	23,855
Less - Valuation allowance	24,165	22,657
Total deferred tax assets	1,549	1,198
<b>Deferred tax liabilities:</b>		
Other	(2,471)	(1,952)
Total deferred tax liabilities	(2,471)	(1,952)
Deferred tax liabilities, net	\$ (922)	\$ (754)

We believe that we have not established a sufficient history of earnings, on a stand-alone basis, to support the more likely than not realization of certain deferred tax assets in excess of existing taxable temporary differences. A valuation allowance has been provided for the majority of these net deferred income tax assets as of December 31, 2020 and 2019. The remaining net deferred tax assets at both December 31, 2020 and 2019 primarily relate to the Company's European operations and certain state

tax benefits and are included in other non-current assets on the consolidated balance sheets. The remaining net deferred tax liabilities at both December 31, 2020 and 2019 primarily relate to the tax amortization of goodwill related to a prior acquisition reported in other long-term liabilities. The Company has federal, state, and foreign net operating loss carryforwards of \$56.5 million, \$13.0 million, and \$16.1 million that expire at various dates from 2021 through 2036.

The Company evaluates its tax positions for potential liabilities associated with unrecognized tax benefits. The Company does not expect to record unrecognized tax benefits in the next twelve months.

For federal income tax purposes, tax years that remain subject to examination include years 2017 through 2020. However, the utilization of net operating loss carryforwards that arose prior to 2016 remains subject to examination through the years such carryforwards are utilized. For Europe, tax years that remain subject to examination include years 2016 to 2020. For Canada, tax years that remain subject to examination include years 2013 to 2020, depending on the subsidiary. For state income tax purposes, the tax years that remain subject to examination include years 2016 to 2020, depending upon the jurisdiction in which the Company files tax returns. The Company and its subsidiaries have various income tax returns in the process of examination. The Company does not expect these examinations will result in material unrecognized tax expense.

## 10. Earnings Per Share

Basic and diluted earnings per share are computed by dividing net loss by the weighted-average number of common shares outstanding for the reporting period. Diluted earnings per share is computed by giving effect to all potential weighted average dilutive common stock, including options, restricted stock units and other equity based awards. A reconciliation of the denominator used in the calculation of basic and diluted earnings per share is as follows (in thousands):

	Year Ended December 31,	
	2020	2019
<b>Numerator:</b>		
Net loss	\$ (5,504)	\$ (2,170)
<b>Denominator:</b>		
Weighted-average shares outstanding for basic loss per share	20,005	19,449
Adjusted weighted-average shares outstanding for diluted loss per share	20,005	19,449

In periods when we recognize a net loss, we exclude the impact of outstanding common stock equivalents from the diluted loss per share calculation as their inclusion would have an antidilutive effect. As of December 31, 2020 and 2019, we had outstanding common stock equivalents of approximately 3.6 million and 2.1 million, respectively, that have been excluded from the calculations of diluted earnings per share attributable to common stockholders because their effect would have been antidilutive.

## 11. Leases

All of our office and warehouse facilities are leased under operating leases. We also lease vehicles primarily as operating leases. Most of our equipment leases are leased under finance leases. Lease costs are included within cost of service fee revenue, selling, general and administrative expenses and interest expense, net in our consolidated statements of operations and comprehensive income (loss).

Total lease costs consist of the following (in thousands):

	December 31, 2020	December 31, 2019
<b>Lease costs:</b>		
Finance lease costs:		
Amortization of right-of-use assets	\$ 919	\$ 1,387
Interest on lease liabilities	91	160
Operating lease costs	10,245	9,326
Variable lease costs	3,277	2,949
Short-term lease costs	1,302	1,656
Total lease costs	\$ 15,834	\$ 15,478

We had \$0.9 million and \$1.9 million of finance lease assets that are reported in property and equipment, net as of December 31, 2020 and 2019, respectively. As of December 31, 2020, our weighted-average remaining lease term relating to our operating leases is 5.3 years, with a weighted-average discount of 5.8%. As of December 31, 2019, our weighted-average remaining lease term relating to our operating leases was 5.6 years, with a weighted-average discount of 5.1%. As of December 31, 2020, our weighted-average remaining lease term relating to our finance leases is 1.6 years, with a weighted-average discount of 5.4%. As of December 31, 2019, our weighted-average remaining lease term relating to our finance leases was 2.1 years, with a weighted-average discount of 5.6%. Our leases have remaining lease terms of up to 9.7 years, some of which include options to extend the leases for up to 10 years and some of which include options to terminate the leases within 1 year.

Maturities of lease liabilities are as follows (in thousands):

	December 31, 2020	
	Operating Leases	Finance Leases
2020	\$ 10,919	\$ 836
2021	10,127	166
2022	7,952	62
2023	5,760	25
2024	4,299	3
Thereafter	8,002	6
Total lease payments	47,059	1,098
Less interest	(7,019)	(42)
Total lease obligations	\$ 40,040	\$ 1,056

Supplemental consolidated cash flow information related to leases is as follows (in thousands):

	December 31, 2020	December 31, 2019
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows arising from operating leases	\$ 10,803	\$ 9,365
Operating cash flows arising from finance leases	\$ 91	\$ 160
Financing cash flows arising from finance leases	\$ 1,173	\$ 1,644
Right-of-use assets obtained in exchange for operating lease liabilities	\$ 6,422	\$ 2,910
Right-of-use assets obtained in exchange for finance lease liabilities	\$ 19	\$ 414

As of December 31, 2020, there were two operating lease commitments that had not yet commenced of approximately \$2.8 million that are contracted to begin in January 2021 with lease terms of 5 years. There were no additional operating or financing leases that have not yet commenced.

## 12. Commitments and Contingencies

The Company is subject to claims in the ordinary course of business, including claims of alleged infringement by the Company or its subsidiaries of the patents, trademarks and other intellectual property rights of third parties. The Company is generally required to indemnify its service fee clients against any third party claims asserted against such clients alleging infringement by the Company of the patents, trademarks and other intellectual property rights of third parties. In the opinion of management, any liabilities resulting from these claims, would not have a material adverse effect on the Company's financial position or results of operations.

## 13. Segment and Geographic Information

The Company's segments are comprised of strategic businesses that are defined by the service offerings they provide and consist of PFS Operations (which provides client services in relation to the customer physical experience, such as order management (OMS), order fulfillment, customer care and financial services) and LiveArea Professional Services (which provides client services in relation to the digital shopping experience of shopping online, such as strategic commerce consulting, strategy, design and digital marketing services and technology services). Each segment is led by a separate Business Unit Executive who reports directly to the Company's Chief Executive Officer.

The Chief Operating Decision Maker ("CODM") evaluates segment performance using business unit direct contribution, which is defined as business unit revenues less costs of revenue and direct selling, general and administrative expenses, including depreciation and amortization. Direct contribution does not include any allocated corporate expenses, nor does it include stock-based compensation. The CODM does not routinely review assets by segment. The balance sheet by segment is not prepared and, therefore, we do not present segment assets below.

Corporate operations is a non-operating segment that develops and implements strategic initiatives and supports the Company's operations by centralizing certain administrative functions such as finance, treasury, information technology and human resources.

The Company has two reporting units: PFS Operations and LiveArea Professional Services. We allocated goodwill to our reporting units using a relative fair value approach. We completed an assessment of any potential goodwill impairment for all reporting units and determined that zero impairment existed.

The following table discloses segment information for the periods presented (in thousands):

	Year ended December 31,	
	2020	2019
<b>Revenues:</b>		
PFS Operations	\$ 256,607	\$ 216,399
LiveArea Professional Services	85,898	77,623
<b>Total revenues</b>	<b>\$ 342,505</b>	<b>\$ 294,022</b>
<b>Business unit direct contribution:</b>		
PFS Operations	\$ 15,170	\$ 11,545
LiveArea Professional Services	7,407	9,247
<b>Total business unit direct contribution</b>	<b>22,577</b>	<b>20,792</b>
Unallocated corporate expenses	(24,522)	(19,905)
<b>Income (loss) from operations</b>	<b>\$ (1,945)</b>	<b>\$ 887</b>
<b>Depreciation and amortization:</b>		
PFS Operations	\$ 6,740	\$ 8,047
LiveArea Professional Services	897	1,162
Unallocated corporate expenses	1,029	1,158
<b>Total depreciation and amortization</b>	<b>\$ 8,666</b>	<b>\$ 10,367</b>

Geographic areas in which the Company operates include the United States, Europe (primarily Belgium and U.K.), Canada, and India. Substantially all of the services performed in India support client arrangements in the United States, where the resulting revenue is reported. The following is geographic information by area. Revenues are attributed based on the Company's domicile.

	Year Ended December 31,	
	2020	2019
<b>Revenues (in thousands):</b>		
United States	\$ 274,129	\$ 243,897
Europe	65,744	46,581
Canada	2,558	3,476
India	8,306	8,098
Inter-segment Eliminations	(8,232)	(8,030)
<b>Total revenues</b>	<b>\$ 342,505</b>	<b>\$ 294,022</b>

	December 31,	
	2020	2019
Long-lived assets (in thousands):		
United States	\$ 73,151	\$ 76,870
Europe	26,446	23,314
Canada	1,725	1,198
India	3,270	3,757
Total long-lived assets	<u>\$ 104,592</u>	<u>\$ 105,139</u>

#### 14. Employee Savings Plan

The Company has a defined contribution employee savings plan under Section 401(k) of the Internal Revenue Code. Substantially all full-time and part-time U.S. employees are eligible to participate in the plan. The Company, at its discretion, may match employee contributions to the plan and also make an additional matching contribution in the form of profit sharing in recognition of the Company's performance. The employer matching contributions are subject to a three-year vesting schedule based on the participant's years of service with us. Our employees in Europe and Canada also have defined contribution plans. The Company contributed approximately \$0.7 million and \$0.7 million during the years ended December 31, 2020 and 2019, respectively, to match an approved percentage of employee contributions.

#### 15. Related Party Transactions

In June 2020 the Company entered into an agreement with Hardinge, Inc. ("Hardinge") in which our LiveArea segment is to provide various services related to e-commerce. Benjamin Rosenzweig ("Mr. Rosenzweig"), a member of our Board of Directors, is a partner at Privet Fund Management LLC ("Privet"). Privet is the general partner and investment manager of funds that own Hardinge and Mr. Rosenzweig also serves on the Board of Directors of Hardinge.

We recognized \$1.0 million in related party revenue in the twelve months ended December 31, 2020. As of December 31, 2020, there was an accounts receivable balance of \$0.7 million from Hardinge.

#### 16. Subsequent Events

On February 25, 2021, we entered into an operating lease for a distribution center in Las Vegas, NV. The operating lease right-of-use asset for the Las Vegas lease is approximately \$3.7 million and the operating lease liability is approximately \$3.7 million.

#### Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

None.

#### Item 9A. Controls And Procedures

##### Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer ("CEO") and our Chief Financial Officer ("CFO"), has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of December 31, 2020. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Based upon that evaluation, as discussed below, our CEO and CFO have concluded that, as of the end of the period covered by this Annual Report, our disclosure controls and procedures were not effective because of the material weaknesses in internal control over financial reporting described below.

Notwithstanding such material weaknesses in internal control over financial reporting, our management, including our CEO and CFO, has concluded that our consolidated financial statements as of and for the year ended December 31, 2020, present fairly, in all material respects, our financial position, results of our operations and our cash flows for the periods presented in this Annual Report, in conformity with U.S. generally accepted accounting principles.

##### Management's Report on Internal Control Over Financial Reporting

Our management, under the supervision of our board of directors, is responsible for establishing and maintaining adequate "internal control over financial reporting," as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our

internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles and includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the Company's assets that could have a material effect on the financial statements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Because of its inherent limitations, a system of internal control over financial reporting may not prevent or detect misstatements.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of annual or interim financial statements will not be prevented or detected on a timely basis.

Our management, including our CEO and CFO, assessed the effectiveness of our internal control over financial reporting as of December 31, 2020 using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control-Integrated Framework (2013) (the "COSO 2013 Framework"). Based on its assessment, our management, including our CEO and CFO, has concluded that the Company did not design, implement and operate effective process-level control activities related to order-to-cash process (specifically controls over revenue recognition pertaining to client invoicing) resulting in deficiencies in our process-level control activities in the following areas:

- There was not sufficient oversight and governance related to the approval of hours to be invoiced;
- The Company did not sufficiently establish review and approval procedures related to invoices; and
- The Company did not have proper spreadsheet controls, including locking down formulas and documenting any changes to spreadsheets.

Because there is a reasonable possibility that a material misstatement of the consolidated financial statements will not be prevented or detected on a timely basis, we concluded the deficiencies represent material weaknesses in our internal control over financial reporting and our internal control over financial reporting was not effective as of December 31, 2020.

#### **Remediation Plan**

Our management is currently in the process of developing the remediation plan to address the material weakness identified during our fourth quarter testing. We are committed to ensuring that our internal controls over financial reporting are designed and operating effectively. We expect the remediation plan to include the following:

- Enhanced invoice review procedures as well as training for reviewers on these procedures and execution of internal controls.
- Spreadsheet controls that include locking cells with formulas and establishing procedures for change control.
- Automation tools to improve our invoicing process.

Although we intend to complete the remediation process as promptly as possible, we cannot, at this time, estimate how long it will take to remediate this material weakness. In addition, we may discover additional material weaknesses that require additional time and resources to remediate and we may decide to take additional measures to address the material weaknesses or modify the remediation steps described above. Until this weakness is remediated, we plan to continue to perform additional analyses and other procedures to ensure that our consolidated financial statements are prepared in accordance with GAAP.

We are fully committed to ensuring that our internal controls over financial reporting are designed and operating effectively.

#### **Attestation Report of the Registered Public Accounting Firm**

BDO USA, LLP, an independent registered public accounting firm, has audited the effectiveness of our internal control over financial reporting as of December 31, 2020 and has expressed an adverse report on the operating effectiveness of our internal control over financial reporting, as stated in their report, which is included herein.

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

During the quarter ended on December 31, 2020, there was no change in internal control over financial reporting (as defined in Rule 13a-15(f) or Rule 15d-15(f) under the Exchange Act) that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## **Report of Independent Registered Public Accounting Firm**

Shareholders and Board of Directors

PFSweb, Inc.  
Allen, TX

### **Opinion on Internal Control over Financial Reporting**

We have audited PFSweb, Inc.'s internal control over financial reporting as of December 31, 2020, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). In our opinion, the Company did not maintain, in all material respects, effective internal control over financial reporting as of December 31, 2020, based on the COSO criteria.

We do not express an opinion or any other form of assurance on management's statements referring to any corrective actions taken by the Company after the date of management's assessment.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated balance sheets of the Company as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive income (loss), shareholders' equity, and cash flows for the years then ended, and the related notes (collectively referred to as "the financial statements") and our report dated March 31, 2021 expressed an unqualified opinion thereon.

### **Basis for Opinion**

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Item 9A, Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit of internal control over financial reporting in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. A material weakness regarding management's failure to design and maintain process-level control activities related to order-to-cash process (specifically controls over revenue recognition pertaining to client invoicing) has been identified and described in management's assessment. This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2020 financial statements, and this report does not affect our report dated March 31, 2021 on those financial statements.

### **Definition and Limitations of Internal Control over Financial Reporting**

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.



/s/ BDO USA, LLP

Dallas, Texas  
March 31, 2021

**Item 9B. Other Information**

None.

**PART III****Item 10. Directors and Executive Officers and Corporate Governance**

Information required by Part III, Item 10, is incorporated herein by reference to the Company's Proxy Statement for its 2020 Annual Meeting of Shareholders (the "Proxy Statement").

**Item 11. Executive Compensation**

Information required by Part III, Item 11 is set forth in our Proxy Statement and incorporated herein by reference.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

Information required by Part III, Item 12 is set forth in our Proxy Statement and incorporated herein by reference.

The following table summarizes information with respect to equity compensation plans under which equity securities of the Company are authorized for issuance as of December 31, 2020:

<b>Plan category (1)</b>	<b>(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights</b>	<b>(b) Weighted-average exercise price of outstanding options, warrants and rights (2)</b>	<b>(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))</b>
Equity compensation plans approved by shareholders	3,378,941	\$ 6.84	1,290,569
Equity compensation plans not approved by shareholders	—		—

(1) See Note 9 to the Consolidated Financial Statements for more detailed information regarding the Company's equity compensation plans.

(2) Excludes 639,421 service-based restricted stock units, 1,185,043 performance-based and market-based restricted stock units and 433,785 deferred stock units.

**Item 13. Certain Relationships and Related Transactions and Director Independence**

Information regarding certain of our relationships and related transactions will be included in our Proxy Statement and is incorporated herein by reference.

**Item 14. Principal Accounting Fees and Services**

Information required by Part III, Item 14 is set forth in our Proxy Statement and incorporated herein by reference.

**PART IV****Item 15. Exhibits, Financial Statement Schedules**

(a) *The following documents are filed as part of this report:*

1. *Financial Statements*  
PFSweb, Inc. and Subsidiaries  
  
Report of Independent Registered Public Accounting Firm  
Consolidated Balance Sheets  
Consolidated Statements of Operations and Comprehensive Income (Loss)  
Consolidated Statements of Shareholders' Equity  
Consolidated Statements of Cash Flows  
Notes to Consolidated Financial Statements

2. *Exhibits*

<b>Exhibit Number</b>	<b>Description of Exhibits</b>
3.1	<a href="#">Amended and Restated Certificate of Incorporation of PFSweb, Inc.</a>
3.1.1	<a href="#">Certificate of Amendment of Certificate of Incorporation of PFSweb, Inc.</a>
3.1.2	<a href="#">Certificate of Amendment to Certificate of Incorporation of PFSweb, Inc.</a>
3.1.3	<a href="#">Certificate of Amendment to Certificate of Incorporation of PFSweb, Inc.</a>
3.1.4	<a href="#">Certificate of Amendment of Amended and Restated Certificate of Incorporation of PFSweb, Inc.</a>
3.2	<a href="#">Amended and Restated By-Laws.</a>
4.1	<a href="#">Rights Agreement, dated as of June 8, 2000, between the Company and ChaseMellon Shareholder Services, LLC.</a>
4.1.7	<a href="#">Amendment No. 7 to Rights Agreement, dated as of June 27, 2018 between the Company and Computershare Inc., successor in interest to Computershare Shareowner Services LLC (formerly known as Mellon Investor Services LLC,) as successor to ChaseMellon Shareholder Services, L.L.C., as rights agent.</a>
4.2	<a href="#">Description of Registrant's securities.</a>
10.5	<a href="#">Industrial Lease Agreement between Shelby Drive Corporation and Priority Fulfillment Services, Inc.</a>
10.7*	<a href="#">Form of Change of Control Agreement between the Company and certain of its executive officers.</a>
10.8	<a href="#">Agreement for Inventory Financing by and among Business Supplies Distributors Holdings, LLC, Supplies Distributors, Inc., Priority Fulfillment Services, Inc., PFSweb, Inc., Inventory Financing Partners, LLC and IBM Credit Corporation.</a>
10.11	<a href="#">Subordinated Demand Note by and between Supplies Distributors, Inc. and Priority Fulfillment Services, Inc.</a>
10.12*	<a href="#">Form of Executive Severance Agreement between the Company and certain of its executive officers.</a>
10.12.1*	<a href="#">Form of Amendment of Executive Severance Agreement.</a>
10.12.2*	<a href="#">Form of Amendment to Change in Control Severance Agreement.</a>
10.34*	<a href="#">Amended and Restated 2005 Employee Stock and Incentive Plan of PFSweb, Inc.</a>
10.42	<a href="#">Lease agreement by and between Binyan Realty LP and Priority Fulfillment Services, Inc.</a>
10.43	<a href="#">Lease Guaranty by PFSweb, Inc. in favor of Binyan Realty LP.</a>
10.44	<a href="#">Lease Agreement dated December 8, 2011, between CCI-Millennium, L.P. and Priority Fulfillment Services, Inc.</a>
10.45	<a href="#">Guaranty of PFSweb, Inc. to CCI-Millennium, L.P.</a>

<b>Exhibit Number</b>	<b>Description of Exhibits</b>
10.47	<a href="#">First Amendment to Industrial Lease Agreement dated May 7, 2013 by and between US Industrial REIT II and Priority Fulfillment Services, Inc.</a>
10.48	<a href="#">Agreement, dated as of May 15, 2013, by and among PFSweb, Inc. and Privet Fund LP, Privet Fund Management LLC, Ryan Levenson and Benjamin Rosenzweig.</a>
10.49	<a href="#">Third Modification, Ratification and Extension of Lease dated February 28, 2014 between Southpark Distribution Center Inc., (successor-in-interest to Shelby Drive Corporation) and Priority Fulfillment Services, Inc.</a>
10.60*	<a href="#">Form of Deferred Stock Unit.</a>
10.61	<a href="#">Guaranty dated March 21, 2016 by PFSweb, Inc., in favor of Stateline J, LLC.</a>
10.62	<a href="#">Deed of Sub-Lease dated December 31, 2015 by and between Milestone Buildcon Private Limited and PFSweb Global Services Private Limited.</a>
10.63	<a href="#">Lease agreement dated June 30, 2016 by and between US Industrial Reit III – Midwest and Priority Fulfillment Services, Inc.</a>
10.64	<a href="#">Second Amendment to Lease agreement dated October 20, 2016 by and between Stateline J, LLC and Priority Fulfillment Services, Inc.</a>
10.66	<a href="#">First Amendment to Lease agreement dated September 16, 2016 by and between Binyan Realty, LP and Priority Fulfillment Services, Inc.</a>
10.67	<a href="#">Second Amendment to Lease agreement dated September 16, 2016 by and between Binyan Realty, LP and Priority Fulfillment Services, Inc.</a>
10.76	<a href="#">Amendment to Lease by and between GPT Stateline Road Owner LLC and Priority Fulfillment Services, Inc. dated September 12, 2017.</a>
10.77	<a href="#">Amendment 19 to Agreement for Inventory Financing.</a>
10.78	<a href="#">Amendment No. 1 dated as of November 1, 2018 by and among Priority Fulfillment Services, Inc., a Delaware corporation, as Borrower, PFSweb, Inc., a Delaware corporation, and certain Subsidiaries and Affiliates, as Guarantors, and Regions Bank, as Administrative Agent, for itself and the other Lenders identified therein.</a>
10.79	<a href="#">Credit Agreement dated August 5, 2015 by and among Priority Fulfillment Services, Inc., PFSweb, Inc., and certain Subsidiaries and Affiliates, Incremental Commitment Lenders and Regions Bank.</a>
10.80	<a href="#">First Incremental Loan Commitment Increase Agreement dated August 21, 2015 by and among Priority Fulfillment Services, Inc., PFSweb, Inc., and certain Subsidiaries and Affiliates, Incremental Commitment Lenders and Regions Bank.</a>
10.81	<a href="#">Second Incremental Loan Commitment Increase Agreement dated September 3, 2015 by and among Priority Fulfillment Services, Inc., PFSweb, Inc., and certain Subsidiaries and Affiliates, Incremental Commitment Lenders and Regions Bank.</a>
10.82	<a href="#">Lease agreement dated March 17, 2016 by and between Stateline J, LLC and Priority Fulfillment Services, Inc.</a>
10.83	<a href="#">Nomination and Standstill Agreement, dated as of March 15, 2019, by and among PFSweb, Inc., Arnaud Ajdler, Engine Capital, L.P., Engine Jet Capital, L.P., Engine Capital Management, L.P., Engine Capital Management GP, LLC, and Engine Investments, LLC.</a>
10.84*	<a href="#">Employment Agreement by and between PFSweb, Inc. and Anu Jain, dated as of April 1, 2019.</a>
10.85*	<a href="#">Separation Agreement and General Release, by and between PFSweb, Inc. and Travis Hess, dated as of May 7, 2019.</a>
10.86*	<a href="#">Employment Agreement by and between PFSweb, Inc. and James Butler, dated as of June 11, 2019.</a>
10.87*	<a href="#">Employment Agreement by and between Priority Fulfillment Services, Inc., a Delaware corporation and Zach Thomann, dated as of May 17, 2020</a>
10.88	<a href="#">Logistics Warehouse Lease Agreement between Weerts Logistic Park III NV and Supplies Distributors SA</a>

<b>Exhibit Number</b>	<b>Description of Exhibits</b>
10.89	<a href="#">Warehouse Lease Agreement between ProLogis Texas II (2) LLC and Priority Fulfillment Services, Inc.</a>
10.90**	<a href="#">Warehouse Lease Agreement between Matter Cheyenne Logistics, LLC and Priority Fulfillment Services, Inc.</a>
21**	<a href="#">Subsidiary Listing.</a>
23.1**	<a href="#">Consent of BDO USA, LLP, Independent Registered Public Accounting Firm.</a>
24.1**	<a href="#">Power of Attorney.</a>
31.1**	<a href="#">Certifications of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350.</a>
31.2**	<a href="#">Certifications of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350.</a>
32.1**	<a href="#">Certifications Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101**	The following financial statements from the Company's Annual Report on Form 10-K for the year ended December 31, 2020, formatted in Inline XBRL: (i) Consolidated Balance Sheets, (ii) Consolidated Statements of Operations and Comprehensive Income, (iii) Consolidated Statements of Shareholders' Equity, (iv) Consolidated Statements of Cash Flows, and (v) Notes to Consolidated Financial Statements.
104 **	Cover Page Interactive Data file, formatted in Inline XBRL (included as Exhibit 101).

\* Denotes management or compensatory agreements

\*\* Filed herewith

**Item 16. Form 10-K Summary**

None.

**SIGNATURES**

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

Dated March 31, 2021

By: /s/Thomas J. Madden

Thomas J. Madden,

*Executive Vice President and Chief Financial Officer*

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Michael Willoughby and Thomas J. Madden, and each of them, either of whom may act without the joinder of the other, as his true and lawful attorneys-in-fact and agents with full power of substitution and re-substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or their substitute or substitutes, may lawfully do or cause to be done or by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/Michael Willoughby</u> Michael Willoughby	Chief Executive Officer (Principal Executive Officer)	March 31, 2021
<u>/s/Thomas J. Madden</u> Thomas J. Madden	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	March 31, 2021
<u>/s/Stephanie DelaCruz</u> Stephanie DelaCruz	Vice President Corporate Controller and Chief Accounting Officer (Principal Accounting Officer)	March 31, 2021
<u>/s/Monica Luechtefeld</u> Monica Luechtefeld	Chairman of the Board	March 31, 2021
<u>/s/David I. Beatson</u> David I. Beatson	Director	March 31, 2021
<u>/s/Benjamin Rosenzweig</u> Benjamin Rosenzweig	Director	March 31, 2021
<u>/s/Shinichi Nagakura</u> Shinichi Nagakura	Director	March 31, 2021
<u>/s/Robert Frankfurt</u> Robert Frankfurt	Director	March 31, 2021
<u>/s/G. Mercedes De Luca</u> G. Mercedes De Luca	Director	March 31, 2021

**MULTI-TENANT INDUSTRIAL TRIPLE NET LEASE**

(Matter Logistics Center @ West Cheyenne)

This Multi-Tenant Industrial Triple Net Lease (this “**Lease**”) is made and entered into as of February 25, 2021 (the “**Effective Date**”), by and between **MATTER CHEYENNE LOGISTICS, LLC**, a Delaware limited liability company (“**Landlord**”) and **PRIORITY FULFILLMENT SERVICES, INC.**, a Delaware corporation (“**Tenant**”). The following exhibits and attachments are incorporated into and made a part of this Lease: **Exhibit A** (Outline and Location of Premises), **Exhibit B** (Work Letter), **Exhibit C** (Prohibited Use), **Exhibit D** (Rules and Regulations), **Exhibit E** (Confirmation Letter, if required), **Exhibit F** (Requirements for Improvements or Alterations by Tenant), **Exhibit G** (Hazardous Materials Survey Form), **Exhibit H** (Move Out Conditions), **Exhibit I** (Minimum Service Contract Requirements), and **Exhibit J** (Additional Provisions).

**1. BASIC LEASE INFORMATION.**

- 1.1 “**Building**” shall mean the industrial building located at 4004 West Cheyenne Avenue, North Las Vegas, Nevada 89032, and commonly known as Building E. “**Rentable Square Footage of the Building**” is deemed to be approximately ±479,579 square feet.
- 1.2 “**Premises**” shall mean the area shown on **Exhibit A** to this Lease, to be known as, Suites 100 and 110 of Building E at Matter Logistics Center @ West Cheyenne. The Rentable Square Footage of the Premises (as herein defined) is deemed to be 122,128 square feet. Landlord and Tenant stipulate and agree that the Rentable Square Footage of the Premises, the Rentable Square Footage of the Building and the Rentable Square Footage of the Project (as herein defined) are correct.
- 1.3 “**Base Rent**”:

<b>Period</b>	<b>Monthly Base Rent Per Square Foot</b>	<b>Total Monthly Base Rent</b>
1 – 12	\$0.53	\$64,727.84
13 – 24	\$0.54	\$66,346.04
25 – 36	\$0.56	\$68,004.69
37 – 48	\$0.57	\$69,704.81
49 – 60	\$0.59	\$71,447.43
61 – 72	\$0.60	\$73,233.62

Notwithstanding the foregoing, Tenant shall be entitled to an abatement of Base Rent, for Lease Months two (2) through seven (7), such that the effective Base Rent rate for Lease Months two (2) through seven (7) shall be zero dollars (\$0.00) (the “**Base Rent Abatement**”). Notwithstanding such Base Rent Abatement all other sums due under this Lease, including Additional Rent, shall be payable as provided in this Lease. The Base Rent Abatement provided for in this paragraph is conditioned upon Tenant’s full and timely performance of all of its obligations under this Lease. If at any time during the Term three or more uncured Events of Default by Tenant occurs beyond the applicable cure periods, then the Base Rent Abatement provided herein shall immediately become void, and Tenant shall promptly pay to Landlord, in addition to all other amounts due to Landlord under this Lease, the full amount of all Base Rent Abatement.

- 1.4 “**Tenant’s Proportionate Share**”: Twenty-Five Point Forty-Seven Percent (25.47%), which is the percentage obtained by dividing (a) the number of square feet in the Premises as stated above by (b) the Rentable Square Footage of the Building. Landlord and Tenant stipulate that

the number of square feet in the Premises and Building set forth above is conclusive and shall be binding upon them.

- 1.5 **“Tenant’s Project Share”**: Sixteen Point Seventy-Eight Percent (16.78%), which is the percentage obtained by dividing (a) the number of square feet in the Premises as stated above by (b) the total Rentable Square Feet of the Buildings in Project.
- 1.6 **“Term”**: The period commencing on the Commencement Date (defined below) and, unless terminated earlier in accordance with this Lease, ending on the last day of the seventy-second (72<sup>nd</sup>) full calendar month following the Commencement Date (the **“Termination Date”**). The **“Commencement Date”** shall mean the later of (i) the date on which the Tenant Improvements (defined in **Exhibit B**) is Substantially Complete (defined in Section 3) or (ii) June 1, 2021. The parties anticipate that the Tenant Improvements will be Substantially Complete on or about June 15, 2021 (the **“Target Commencement Date”**). If the Termination Date does not fall on the last day of a calendar month, then the Termination Date shall be the last day of the calendar month in which the Termination Date would otherwise occur, and the Base Rent rate, per rentable square foot, applicable to the portion of such calendar month so added to the Term shall be the same as that which applies to the preceding portion of such calendar month.
- 1.7 **“Security Deposit”**: None.
- 1.8 **“Guarantor(s)”**: None.
- 1.9 **“Broker(s)”**: Jones Lang LaSalle Brokerage, Inc. (Jason Simon) (**“Tenant’s Broker”**), which represented Tenant in connection with this transaction, and Colliers International (Jerry Doty) (**“Landlord’s Broker”**), which represented Landlord in connection with this transact
- 1.10 **“Permitted Use”**: Tenant shall utilize the Premises for general office and administrative use, distribution related to an e-commerce business and all related lawful uses.
- 1.11 **“Notice Address(es)”**:

Landlord:

Matter Cheyenne Logistics, LLC  
c/o Parallel Capital Partners  
4105 Sorrento Valley Boulevard  
San Diego, CA 92121  
Attention: Tom van Betten  
Telephone: (858) 882-0900

Tenant:

Prior to and after the Commencement Date:  
Priority Fulfillment Services, Inc.  
505 Millennium Drive  
Allen, TX 75013  
Attn: General Counsel  
Telephone: (972) 881-2900  
Email: Contracts@pfsweb.com

- 1.12 **“Land”** means the parcel(s) of land on which the Project is located (the **“Land”**) and the parking facilities and other improvements serving the Project and the parcel(s) of Land on which they are located.
- 1.13 **“Project”** means the development known as Matter Logistics Center @ West Cheyenne, consisting of the Land, the Building, and five (5) buildings (collectively referred to as the **“Buildings”**) and all other improvements built on the Land, containing an aggregate total of approximately 727,926 Rentable Square Feet (as hereafter defined) within the Buildings.



1.14 “**Rentable Square Feet (Foot)**” or “**Rentable Square Footage**” or “**Rentable Area**” of the Premises, the Building, and/or the Project are deemed to be the amounts set forth in this Article 1. The measurement of the Rentable Square Feet has been calculated by an architect engaged by Landlord using accepted BOMA Standards based upon "drip line" methodology. The Rentable Square Feet in the Building and in the other Buildings allocates the Common Area in each building to all tenant space therein on a prorata basis.

2. **PREMISES/USE.**

2.1 **Premises.** Landlord hereby leases to Tenant the Premises, but excluding the Common Area (as herein defined) and any other portion of the Building, the Land, and/or the Project. Tenant (i) ACCEPTS THE PREMISES "AS-IS," EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THE WORK LETTER; AND EXCEPT AS PROVIDED HEREIN, LANDLORD MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES (WITHOUT LIMITATION, LANDLORD MAKES NO WARRANTY AS TO THE HABITABILITY, FITNESS OR SUITABILITY OF THE PREMISES FOR A PARTICULAR PURPOSE, NOR AS TO COMPLIANCE WITH ANY APPLICABLE LAWS (AS HEREIN DEFINED), OR AS TO THE ABSENCE OF ANY TOXIC OR OTHERWISE HAZARDOUS MATERIALS), (ii) acknowledges that the Premises are acceptable for Tenant's use. Tenant hereby acknowledges that the area of the Premises, the Building and the Project set forth in the Basic Lease Information is true and correct.

2.2 **Use.** The Premises shall be used only for the Permitted Use and for no other uses without Landlord's written consent. Tenant's use of the Premises shall be in compliance with and subject to all applicable laws, statutes, codes, ordinances, orders, zoning, rules, regulations, conditions of approval and requirements of all federal, state, county, municipal and governmental authorities and all administrative or judicial orders or decrees and all permits, licenses, approvals and other entitlements issued by governmental entities, and rules of common law, relating to or affecting the Premises, the Building or the Project or the use or operation thereof, whether now existing or hereafter enacted, including, without limitation, the Americans with Disabilities Act of 1990, 42 USC 12111 et seq. (the "ADA") as the same may be amended from time to time, all Environmental Laws (as defined in Section 15.1), and any covenants, conditions and restrictions encumbering the Land and/or the Project ("CC&Rs") or any supplement thereto recorded in any official or public records with respect to the Project or any portion thereof (collectively, "**Applicable Laws**"). Tenant shall be responsible for obtaining any permit, business license, or other permits or licenses required by any governmental agency permitting Tenant's use or occupancy of the Premises and, except as set forth in the Work Letter, for performing, at Tenant's sole cost, all modifications or additions to the Premises in order to be in ADA compliance for its use of the Premises. Landlord warrants that the Tenant Improvements constructed by Landlord pursuant to the Work Letter will comply with ADA upon the Commencement Date. Except as specifically set forth in the preceding sentence, Landlord shall have no obligation to bring the Premises into compliance with ADA. If a change to the Premises becomes required under Applicable Laws (or if any such requirement is enforced) as a result of any Alterations (herein defined) made to the Premises by Tenant, the installation of any trade fixture in the Premises by Tenant, any particular use of the Premises by Tenant other than the Permitted Use, or any breach of Tenant's obligations under this Lease, then Tenant, upon demand, shall (x) at Landlord's option, either make such change at Tenant's cost or pay Landlord the cost of making such change. In no event shall the Premises be used for any Prohibited Use (as defined in **Exhibit C**). Tenant and all Tenant's Parties shall comply with the rules and regulations attached hereto as **Exhibit D**, together with such additional rules and regulations as Landlord may from time to time prescribe ("**Rules and Regulations**"). Landlord shall not knowingly discriminate against Tenant in Landlord's enforcement of the Rules and Regulations. Landlord shall not be responsible or liable to Tenant for the non-performance of any other tenant or occupant of the Building or Project of the Rules and Regulations or for any

interference or disturbance of Tenant by any other tenant or occupant. Tenant shall not commit waste, overload the floors or structure of the Building, subject the Premises, the Building, the Common Area, or the Project to any use which would damage the same or increase the risk of loss or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises or the Project, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, use or allow the Project and/or the Premises to be used for any unlawful purpose or conduct, or permit to be conducted, any auction upon the Project and/or the Premises.

**3. ADJUSTMENT OF COMMENCEMENT DATE; POSSESSION.**

3.1 **Commencement Date.** The Premises shall be deemed to be "**Substantially Complete**" on the date on which: the Tenant Improvements have been performed (or would have been performed absent any Tenant Delay (as herein defined)), other than any details of construction, mechanical adjustment or any other matter, the noncompletion of which does not materially interfere with Tenant's use of the Premises for the Permitted Use. "**Tenant Delay**" shall mean any delay in the performance of the Tenant Improvements as a result of the acts or omissions of Tenant or any Tenant Party (as herein defined) or their respective contractors or vendors, including, without limitation, changes requested by Tenant to approved plans, Tenant's failure to comply with any of its obligations under this Lease, Tenant's failure to install furniture, equipment or telecommunications cable in the Premises within the time periods specified by Landlord and to the extent required in order for Landlord to obtain all approvals necessary for the occupancy of the Premises, Tenant's failure to complete work on or to the Premises to be performed by Tenant, or Tenant's specification of any materials or equipment with long lead times not specifically identified in the approved plans. Tenant shall execute and return (or, by notice to Landlord, reasonably object to) a notice substantially in the form of **Exhibit E**, as a confirmation of the information set forth therein within thirty (30) days after receiving it from Landlord, and if Tenant fails to do so, Tenant shall be deemed to have executed and returned it without exception.

3.2 **Possession.** In the event that Landlord fails to Substantially Complete the Tenant Improvements by the date which is one hundred twelve (112) days after the date upon which this Lease has been executed and delivered by Landlord and Tenant, for reasons other than Force Majeure events or Tenant Delays, then Tenant, as Tenant's sole remedy, shall be entitled to one (1) day of rental abatement for each one (1) day the Tenant Improvements are not Substantially Completed beyond such one hundred twelfth (112<sup>th</sup>) day, which shall be attributable to the Rent incurred upon and after the Commencement Date. The Commencement Date for the Premises shall be postponed until the date Landlord delivers possession of the Premises Substantially Complete. Except as otherwise provided in this Lease, Tenant shall not be permitted to take possession of or enter the Premises prior to the Commencement Date without Landlord's approval. If Tenant takes possession of or enters the Premises before the Commencement Date as agreed by Landlord pursuant to **Exhibit J**, Tenant shall be subject to the terms and conditions of this Lease; provided, however, except for the cost of services requested by Tenant (e.g. electricity, HVAC service, etc.), Tenant shall not be required to pay Rent for any entry or possession before the Commencement Date during which Tenant, with Landlord's approval, has entered, or is in possession of, the Premises for the sole purpose of performing improvements or installing furniture, equipment or other personal property, storage of goods and providing certain services as provided in **Exhibit J**.

4. **RENT.** Tenant shall pay to Landlord the Base Rent, Real Property Taxes (as herein defined) and Operating Expenses (as herein defined), in advance, on the first day of each calendar month. All Rent and payments required to be paid by Tenant to Landlord shall be made by Tenant payable to the entity and sent to the address Landlord designates and shall be made by good and sufficient check payable in

United States of America currency or by other means acceptable to Landlord or by Electronic Fund Transfer of immediately available federal funds before 11:00 a.m. Eastern Time. Upon the execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent, the first monthly installment of estimated Operating Expenses. If the Term commences (or ends) on a date other than the first (or last) day of a month, Base Rent shall be prorated on the basis of a thirty (30) day month. All sums other than Base Rent which Tenant is obligated to pay under this Lease shall be deemed to be additional rent due hereunder ("**Additional Rent**"), whether or not such sums are designated Additional Rent. The term "**Rent**" means the Base Rent and all Additional Rent payable hereunder. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any rent due hereunder except as may be expressly provided in this Lease. If Tenant is delinquent in any monthly installment of Base Rent or Additional Rent for more than five (5) days, Tenant shall pay to Landlord on demand a late charge equal to five percent (5%) of such delinquent sum and such delinquent sum shall also bear interest from the date such amount was due until paid in full at the lesser of (i) fifteen percent (15%) per annum; or (ii) at the maximum rate permitted by law ("**Applicable Interest Rate**"). The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty.

5. **INTENTIONALLY OMITTED.**

6. **UTILITIES**

6.1 **Utilities.** Tenant shall pay all charges for heat, water, gas, electricity, telephone, internet and any other utilities and services used on or provided to the Premises, along with any taxes, penalties, and surcharges related thereto and any maintenance and facility charges in connection with the provision of such utilities. If certain utilities are furnished to the Premises in common with other premises, then Landlord shall make a reasonable good faith estimate as to the amount used by each tenant (including Tenant) and bill each tenant accordingly; however, at any time, Landlord may elect to install one or more sub-meters for one or more premises (which, if installed at the Premises, shall be at Landlord's expenses) in which event Landlord will bill each tenant whose premises is sub-metered for the amount used according to that tenant's sub-meter. Any amounts which Landlord bills to Tenant under the terms of this Section 6.1 will be considered Additional Rent and will be due within thirty (30) days after the date upon which Landlord delivers such bill to Tenant.

6.2 **Interruption of Utilities.** Landlord shall have no liability to Tenant for any interruption in utilities or services to be provided to the Premises when such failure is caused by all or any of the following: (a) accident, casualty, breakage or repairs; (b) strikes, lockouts or other labor disturbances or labor disputes of any such character; (c) governmental regulation, moratorium or other governmental action; (d) inability, despite the exercise of reasonable diligence, to obtain electricity, water or fuel; (e) service interruptions or any other unavailability of utilities resulting from causes beyond Landlord's control including without limitation, any electrical power "brown-out" or "black-out"; (f) act or default by Tenant or other party; or (g) any other cause beyond Landlord's reasonable control. In the event of any stoppage or interruption of services or utilities which are not obtained directly by Tenant, Landlord shall diligently attempt to resume such services or utilities as promptly as practicable. Tenant hereby waives the provisions of any applicable existing or future law, ordinance or governmental regulation concerning constructive eviction or permitting the termination of this Lease due to an interruption, failure or inability to provide any services. If Tenant is prevented from using, and does not use, the Premises or a substantial portion thereof as a result of any negligent failure by Landlord to provide utility services to the Premises which Landlord is obligated to provide pursuant to this Lease, and such failure was not caused directly or indirectly by the negligence or willful misconduct of Tenant, its employees, agents or visitors, guests, invitees or licensees (an "Abatement Event"), then Tenant shall give written notice of such Abatement Event to

Landlord. If the Abatement Event continues for five (5) consecutive business days (the "Abatement Period") after Landlord's receipt of Tenant's written notice of the Abatement Event, then Base Rent shall be abated or reduced after expiration of the Abatement Period, for such time following expiration of the Abatement Period that Tenant continues (as a result of the Abatement Event) to be so prevented from using, and does not use, the Premises or a substantial portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises.

7. **TAXES.** Tenant shall pay to Landlord Tenant's Proportionate Share and Tenant's Project Share of all Real Property Taxes (as herein defined) for each full or partial calendar year during the Term in accordance with the terms and provisions of Section 8 and Section 9 below. "**Real Property Taxes**" shall mean (a) all taxes, assessments, supplementary taxes, possessory interest taxes, levies, fees, exactions or charges and other governmental charges, together with any interest, charges, fees and penalties in connection therewith, which are assessed, levied, charged, conferred or imposed by any public authority upon the Land, the Building, the Property, the Project or any other improvements, fixtures, equipment or other property located at or on the Land, the Building, the Property, or the Project, all capital levies, franchise taxes, any excise, use, margin, transaction, sales or privilege taxes, assessments, levies or charges and other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease (excluding net income taxes imposed on Landlord unless such net income taxes are in substitution for any Real Property Taxes payable hereunder), including but not limited to, gross receipts taxes, assessments for special improvement districts and building improvement districts, governmental charges, fees and assessments for police, fire, traffic mitigation or other governmental service of purported benefit to the Land, Building, Property, Project or Premises, taxes and assessments levied in substitution or supplementation in whole or in part of any such taxes and assessments and the share of the Land, Building, Property, Project and Premises of any real estate taxes and assessments under any reciprocal easement agreement, common area agreement or similar agreement as to the Land, Building, Property, Project or Premises; (b) all personal property taxes for property that is owned by Landlord and used in connection with the operation, maintenance and repair of the Land, Building, Property, Project or Premises; and (c) all costs and fees incurred in connection with seeking reductions in any tax liabilities described in (a) and (b), including, without limitation, any costs incurred by Landlord for compliance, review and appeal of tax liabilities. Prior to delinquency, Tenant shall pay all taxes and assessments, together with any interest, charges, fees and penalties in connection therewith, levied upon trade fixtures, alterations, additions, improvements, inventories, equipment and other personal property located and/or installed on the Premises by Tenant; and, upon request, Tenant shall provide Landlord copies of receipts for payment of all such taxes and assessments. To the extent any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced by Landlord. Landlord may, but is not obligated to, contest by appropriate legal proceedings the amount, validity, or application of any Real Property Taxes or liens thereof.

8. **OPERATING EXPENSES.**

8.1 **Operating Expenses.** For clarification purposes, Tenant's Proportionate Share of Operating Expenses (defined below) relates only to such Operating Expenses actually incurred by Landlord exclusively in the ownership, operation, maintenance, repair, replacement and management of the Building. Tenant shall be responsible for Tenant's Project Share to the extent applicable to the Project. Tenant shall pay to Landlord Tenant's Proportionate Share, or Tenant's Project Share, as the case may be, of actual Operating Expenses for each full or partial calendar year during the Term, as provided in Section 9 below. It is intended that this Lease be a "triple net lease," and that the Rent to be paid hereunder by Tenant will be received by Landlord without any deduction or offset whatsoever by Tenant, foreseeable or unforeseeable, except as expressly set forth in this Lease. Nothing herein contained shall be deemed to require Tenant to pay or discharge any liens or mortgages of any character whatsoever which may exist or hereafter be placed upon the Premises by an affirmative act or omission of Landlord. Except

as expressly provided to the contrary in this Lease, Landlord shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease or the ownership, construction, maintenance, operation or repair of the Premises, Property or the Project. To the extent the Building shares certain items or services with other buildings, Landlord shall reasonably allocate items or services reasonably be identified as attributable to a particular building or buildings on a building by building basis between such buildings and/or users based on the ground floor area of the Premises bears to the total ground floor area in the Building on the first day of January for the relevant calendar year for which any calculation is being made (for which Tenant pays Tenant's Proportionate Share of the Building) and those charged to all tenants of the Property.

- 8.2 **Definition of Operating Expenses.** "Operating Expenses" means the fair and equitable portion of the actual total costs and expenses incurred by Landlord in the ownership, operation, maintenance, repair, replacement and management of the Building, the Land, the Building Common Area, the Project and/or the Project Common Area, including, but not limited to: (1) repair, replacement, maintenance, utility costs and landscaping of the Building Common Area and Project Common Area, including, but not limited to, any and all costs of maintenance, repair and replacement of all parking areas (including bumpers, sweeping, striping and slurry coating), common driveways, loading and unloading areas, trash areas, outdoor lighting, sidewalks, walkways, landscaping (including tree trimming), irrigation systems, fences and gates and other costs which are allocable to the Building, the Building Common Area, the Land, the Project and/or the Project Common Area; (2) non-structural maintenance and repair of the roof (and roof membrane), and exterior walls of the Premises (including exterior painting); (3) the costs relating to the insurance maintained by Landlord as described in Section 11.1 below for the annual premiums; (4) costs under maintenance contracts for, and the repair and replacement of, the elevators, if any, and all heating, ventilation and air-conditioning (HVAC) systems, if any, but only to the extent maintained by Landlord or to the extent used in common with other occupants of the Building or Project or otherwise serving any Common Area; (5) maintenance, repair, replacement, monitoring and operation costs of all mechanical, electrical and plumbing systems, but only to the extent maintained by Landlord or to the extent used in common with other occupants of the Building or Project or otherwise serving any Common Area; (6) maintenance, repair, replacement, monitoring and operation costs of the fire/life safety and sprinkler system (to the extent Landlord is obligated to do so pursuant to Section 12.2); (7) trash collection and snow removal costs; (8) costs of capital improvements or capital replacements (excluding the roof structure) made to or capital assets acquired for the Building, the Project, or the Land after the Commencement Date that are intended to reduce Operating Expenses or are reasonably necessary for the health and safety of the occupants of the Building or the Project or are required under any governmental law or regulation, which capital costs, or an allocable portion thereof, shall be amortized over the useful life for a period determined by Landlord based upon generally accepted accounting principles consistently applied together with interest on the unamortized balance at seven percent (7%); (9) any other costs incurred by Landlord related to the Building, the Land and/or the Project including, but not limited to, paving, parking areas, roads, driveways, alleys, mowing, landscape, heating and ventilation; (10) assessments, association fees and all other costs assessed or charged under the CC&Rs, if any, that are attributable to the Land, the Building and/or the Project in connection with any property owners or maintenance association or operator; (11) a management fee, not to exceed 5% of net receipts from leases at the Building, for the management of this Lease, the Premises, the Building, the Land and/or the Project including the cost of those services which are customarily performed by a property management services company, whether performed by Landlord or by an affiliate of Landlord or through an outside management company or any combination of the foregoing; and and (12) wages and salaries of on-site management employees and reasonable allocation of offsite employees who perform a portion of their services in connection with the operation, maintenance or security of the Project. Operating

Expenses shall not include (i) any costs, reserves or amortization related to capital repairs or replacements necessary to maintain the structural soundness of the foundation, replacement of or structural repairs to the roof structure or the exterior walls, correcting defects in the construction of the Building or any other building in the Project or in the building equipment, except that conditions (not occasioned by construction defects) resulting from ordinary wear and tear will not be deemed defects; (ii) repairs to the extent covered by insurance proceeds that are actually received by Landlord, or paid or compensated otherwise by Tenant or other third parties, including because of the total or partial destruction of the Project or the condemnation of a portion of the Building or any other building in the Project; (iii) alterations solely attributable to tenants of the Project other than Tenant; (iv) marketing expenses, including without limitation, costs of tenant improvements, abatements, concessions and commissions with leasing the Project; (v) any cost or expense associated with compliance with any laws, ordinances, rules or regulations regarding any condition existing in the Building or on the Land or in the Project if such condition existed prior to the Commencement Date or due to the gross negligence or willful misconduct of Landlord and the acts and omissions of its agents, employees or contractors; (vi) costs of decorating, redecorating, or special cleaning or other services provided to certain tenants and not provided on a regular basis to all tenants of the Project; (vii) any charge for depreciation of the Project or equipment and any interest or other financing charge; (viii) all costs for which Tenant or any other tenant in the Project is being charged other than pursuant to the operating expense clauses of leases for space in the Project; (ix) the cost of any work or service performed for or facilities furnished to any tenant of the Building or any other building in the Project to a materially greater extent or in a manner materially more favorable to such tenant than that performed for or furnished to Tenant; (x) ground rent or similar payments to a ground lessor (xi) costs arising from the presence of any Hazardous Materials within, upon or beneath the Project regardless of how the same was introduced to the Project and/or whether such introduction was in violation of Environmental Law applicable as of the date of such introduction, unless the presence is caused by the acts or omissions of Tenant; (xii) salaries and compensation of ownership and management personnel and other personnel to the extent that such persons provide services to properties other than the Building, unless reasonably allocated per services provided; (xiii) costs of selling or financing the Project, the Building or any portions thereof.; and (xiv) all interest and penalties incurred as a result of Landlord's negligently failing to pay any bill as the same shall become due.

- 8.3 **Gross Up.** If the Project is less than ninety-five percent (95%) occupied during any calendar year, the variable components of Operating Expenses as determined by Landlord shall be calculated as if the Project had been 95% occupied for the full calendar year. . Any Operating Expenses or Real Property Taxes that are specifically attributable to the Building or to any other building in the Project or to the operation, repair and maintenance thereof, may be allocated entirely to the Building or to such other building. However, any Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, may be equitably allocated by Landlord to all buildings in the Project. Except pursuant to this Section 8.3, it is understood that Landlord shall not, under no circumstances, charge for any expense which is not actually incurred as required or allowed under the Lease.

## 9. ESTIMATED EXPENSES.

- 9.1 **Payment.** "Estimated Expenses" for any particular year shall mean Landlord's estimate of Operating Expenses and Real Property Taxes for a calendar year. For the purposes of Section 9 of this Lease, Tenant's Proportionate Share and Tenant's Project Share shall collectively be referred to as "**Tenant's Share.**" Tenant shall pay Tenant's Share of the Estimated Expenses with installments of Base Rent in monthly installments of one-twelfth (1/12th) thereof on the first day of each calendar month during such year. If at any time Landlord determines that Operating Expenses and/or Real Property Taxes are projected to vary from the then Estimated

Expenses, Landlord may, by notice to Tenant, revise such Estimated Expenses, and Tenant's monthly installments for the remainder of such year shall be adjusted so that by the end of such calendar year Tenant has paid to Landlord Tenant's Share of the revised Estimated Expenses for such year. If Landlord does not provide Tenant with an estimate of the Operating Expenses or the Real Property Taxes by January 1 of a calendar year, Tenant shall continue to pay monthly installments based on the previous year's estimate(s) until Landlord provides Tenant with the new estimate. Upon delivery of the new estimate, an adjustment shall be made for any month for which Tenant paid monthly installments based on the previous year's estimate. Tenant's Share of Estimated Expenses for the 2021 calendar year is estimated to be Twelve Thousand Two Hundred Twelve and 80/100 Dollars (\$12,212.80) per month (which is Ten Cents (\$0.10 per month per square foot in the Premises).

- 9.2 **Adjustment. "Operating Expenses and Real Property Taxes Adjustment"** (or "**Adjustment**") shall mean the difference between Tenant's Share of Estimated Expenses, on the one hand, and the actual Tenant's Share of Operating Expenses and Real Property Taxes, collectively, on the other hand, for any calendar year. Promptly after the end of each calendar year, Landlord shall deliver to Tenant a statement of actual Tenant's Share of Operating Expenses and Real Property Taxes for such calendar year, accompanied by a computation of the Adjustment. Subject to review and adjustment in accordance with **Section 9.3**, for payment of the differential between the estimated and the actual Operating Expenses and Real Property Taxes, if Tenant's payments for estimated Operating Expenses are less than Tenant's Share of Operating Expenses, or if Tenant's estimated payments of Real Property Taxes are less than Tenant's Share of Real Property Taxes, then Tenant shall pay the difference within twenty (20) days after receipt of such statement. Tenant's obligation to pay such amount shall survive the expiration or termination of this Lease. If Tenant's payments for estimated Operating Expenses exceed the actual Tenant's Share of Operating Expenses, or if Tenant's payments for estimated Real Property Taxes exceed the actual Tenant's Share of Real Property Taxes, then (i) so long as an Event of Default by Tenant has not occurred and is continuing, Landlord shall credit such excess amount to future installments of Tenant's Share of Operating Expenses and/or Real Property Taxes, as the case may be, for the next calendar year (or pay to Tenant such excess in the event the Term has expired and (ii) if an Event of Default by Tenant has occurred and is continuing, Landlord shall apply such excess amount to any Base Rent then due and outstanding.
- 9.3 Within sixty (60) days after receiving Landlord's actual Tenant's Share of Operating Expenses and Real Property Taxes, Tenant (or its agent) may, upon advance written notice to Landlord and during reasonable business hours, cause a review of Landlord's books and records with respect to the preceding calendar year to determine the accuracy of the Tenant's Share of Operating Expenses and Real Property Taxes. Landlord shall make all pertinent records available for review that are reasonably necessary for Tenant (or its agent) to conduct its review either in person or electronically. If Tenant retains an agent, at Tenant's sole cost and expense, to review Landlord's records, the agent shall be a CPA of national standing, which may include Tenant's employees, that is not compensated on a contingency basis and is also subject to a reasonable confidentiality agreement. Within forty-five (45) days after all of the records necessary for review are made available to Tenant, Tenant shall have the right to give Landlord written notice (an "**Objection Notice**") stating in reasonable detail any objection to the Tenant's Share of Operating Expenses and Real Property Taxes for that year. If Tenant provides Landlord with a timely Objection Notice, Landlord and Tenant shall work together in good faith to resolve any issues raised in Tenant's Objection Notice. If Tenant fails to provide Landlord with a timely Objection Notice, Landlord's Tenant's Share of Operating Expenses and Real Property Taxes shall be deemed final and binding, and Tenant shall have no further right to review or object to such statement for that year. If Landlord and Tenant determine that the actual Operating Expenses and/or Real Property Taxes for the calendar year are less than those reported, Landlord shall provide Tenant with a credit against the next installment of Rent in the

amount of the overpayment by Tenant. Likewise, if Landlord and Tenant determine that the actual Operating Expenses and/or Real Property Taxes for the calendar year are greater than reported, Tenant shall pay Landlord the amount of any underpayment within thirty (30) days after such determination. The records obtained by Tenant shall be treated as confidential.

**10. INDEMNITY AND WAIVER OF CLAIMS.**

10.1 **Indemnity.** Except to the extent any Losses (defined below) are caused by the gross negligence or willful misconduct of Landlord or Landlord's agents, contractors or employees, Tenant shall indemnify, protect, defend (by counsel acceptable to Landlord) and hold harmless Landlord and Landlord's affiliated entities, and each of their respective trustees, members, managers, principals, beneficiaries, partners, directors, officers, employees, shareholders, Mortgagees, agents, contractors, successors and assigns (individually and collectively, "**Indemnitees**") from and against any and all claims, judgments, causes of action, damages, obligations, penalties, fines, taxes, costs, liens, liabilities, losses, charges and expenses, including without limitation all attorneys' fees and other professional fees (collectively referred to as "**Losses**") which may be imposed upon, incurred by or asserted against Landlord or any of the Indemnitees at any time during or after the Term by any third party and arising out of or in connection with any Event of Default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, any damages or injury occurring in the Premises, Tenant's use of the Premises, any acts or omissions (including violations of Applicable Laws) of Tenant or any Tenant Party, the conduct of Tenant's business, or any activity, work or things done, permitted or suffered by Tenant or any Tenant Party in or about the Premises, the Building, the Common Area, or other portions of the Project, except to the extent caused by Landlord's gross negligence or willful misconduct. Landlord reserves the right to retain counsel for its defense, in which case Tenant shall be responsible for the costs of such defense. The obligations of Tenant under this Section 10 shall survive the termination, of this Lease with respect to any claims or liability arising prior to such termination.

10.2 Intentionally Omitted.

**11. INSURANCE.**

11.1 **Landlord.** Landlord shall maintain insurance policies insuring the Building against fire and extended coverage (including, if Landlord elects, "special cause of loss form" coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles in the form and endorsements of such coverage as selected by Landlord, together with business interruption insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, including, without limitation, liability insurance in such amounts and on such terms as Landlord shall determine. The Building may be included in a blanket policy or captive insurance program. Tenant shall pay to Landlord, as a portion of the Operating Expenses, the costs of the insurance coverages described herein, including, without limitation, Landlord's cost of any self-insurance deductible or retention.

11.2 **Tenant.** Tenant shall, at Tenant's expense, obtain and keep in force at all times the following insurance in the following coverage amounts, which coverage amounts Landlord may reasonably increase from time to time upon sixty (60) days advance written notice to Tenant in the event Tenant's operations change:

11.2.1 Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance ("**CGL Policy**") (occurrence form) having a combined single limit of not less than Three Million Dollars (\$3,000,000.00) per occurrence with deductible amounts that are commercially reasonable in Tenant's market, including



coverage for, among other things, bodily injury, personal injury, property damages arising out of Tenant's operating and contractual liabilities, including coverage formerly known as broad form, blanket contractual liability for written contracts, premises and operations, products/completed operations, owners and contractors protective, personal and advertising injury, and with an "Additional Insured-Managers or Lessors of Premises Endorsement" and containing the "Amendment of the Pollution Exclusion Endorsement" for damage caused by a hostile fire. If applicable, and, if necessary, Tenant shall provide for restoration of the aggregate limit. The CGL Policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Tenant's indemnity obligations under this Lease;

- 11.2.2 Automobile Liability Insurance. Business automobile liability insurance having a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and insuring Tenant against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;
- 11.2.3 Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by applicable state and federal statute, and covering all persons employed by Tenant, including volunteers, in the conduct of its operations on the Premises, together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000.00);
- 11.2.4 Property Insurance. "All risk" or "special cause of loss form" property insurance including coverage for vandalism, malicious mischief, sprinkler leakage and, if applicable, boiler and machinery comprehensive form, insuring (1) Tenant's fixtures, furniture, equipment (including electronic data processing equipment, if applicable), merchandise, inventory, and all other personal property and other contents contained within the Premises (collectively "**Tenant's Property**") and
- (2) the Alterations (as hereinafter defined) in an amount equal to the then applicable replacement value thereof. Landlord shall be designated as a loss payee with respect to Tenant's property insurance on any Alterations. In the event property of Tenant's invitees or customers are kept in the Premises or Project, Tenant shall maintain insurance for the full value of the property of such invitees or customers as determined by the warehouse contract between Tenant and its customer; and
- 11.2.5 Business Interruption. Loss of income and extra expense insurance in amounts as will reimburse Tenant for direct loss of earnings for a period of not less than twelve (12) months, attributable to all perils included in the "all risk" or "special cause of loss form" property insurance policy required in Section 11.2.4 above or attributable to prevention of access to the Premises as a result of such perils;
- 11.2.6 Umbrella/Excess Insurance. An umbrella liability policy or excess liability policy having a limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) aggregate, which policy shall be in "following form" and shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. Such umbrella liability policy or excess liability policy shall include coverage for additional insureds.

11.3 General.

- 11.3.1 Insurance Companies. Insurance required to be maintained by Tenant shall be written by companies authorized to do business in the state in which the Premises are located and having a "Financial Strength Rating" of at least "A-VIII" as determined by A.M. Best Company.
- 11.3.2 Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for all insurance required to be maintained by Tenant in the form of ACORD 28 (Evidence of Commercial Property Insurance) and ACORD 25-S (Certificate of Liability Insurance), no later than seven (7) days after the Effective Date of this Lease (but in any event prior to any entry onto the Premises by Tenant or any Tenant Party). Tenant shall, at least ten (10) days prior to expiration of any required coverage, furnish Landlord with certificates of renewal. Acceptance by Landlord of delivery of any certificates of insurance does not constitute approval or agreement by Landlord that the insurance requirements in Section 11.2 have been met, and failure of Landlord to demand such evidence of full compliance with these insurance requirements or failure of Landlord to identify a deficiency from evidence provided will not be construed as a waiver of Tenant's obligation to maintain such insurance. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and costs suffered or incurred by Landlord (including litigation costs and attorneys' fees and expenses) resulting from said failure. If Tenant fails to deliver any certificate or renewal to Landlord required under this Lease within the prescribed time period or if any such policy is canceled or modified during the Term without Landlord's prior written consent, Landlord may obtain such insurance and charge the cost thereof to Tenant which amount shall be payable by Tenant to Landlord upon demand, as Additional Rent or impose on Tenant, as Additional Rent, a monthly delinquency fee, for each month during which Tenant fails to comply with the foregoing obligation, in an amount equal to two percent (2%) of the Base Rent then in effect.
- 11.3.3 Additional Insureds; Primary Coverage. Landlord, Landlord's Mortgagee, if any, any property management company of Landlord for the Premises, and all affiliates (of the above) and their respective directors, officers, employees, partners and members, shall be named as additional insureds, including, but not limited to CPG LV I LLC, a Delaware limited liability company, Centra Craig JV LLC, a Delaware limited liability company ("**Additional Insureds**") under Insurance Services Office ("**ISO**") endorsement CG 201011 85 or equivalent under all of the policies required by Sections 11.2.1, 11.2.2, 11.2.6 and 11.2.7, and such endorsement shall be included with the certificates to be provided to Landlord pursuant to Section 11.3.2 above. The policies carried or required to be carried by Tenant pursuant to Sections 11.2.1, 11.2.2, 11.2.6 and 11.2.7 shall provide for severability of interest and shall be primary as respects the Additional Insureds, and any insurance maintained by the Additional Insureds shall be excess and non-contributing. Landlord is to be insured as its interests may appear and is to be designated as a loss payee on the insurance required to be maintained by Tenant pursuant to Section 11.2.4.
- 11.3.4 Limits of Insurance. The limits and types of insurance maintained by Tenant shall not limit Tenant's liability under this Lease, except as expressly provided in Section 11.3.5 below.
- 11.3.5 Mutual Waiver of Subrogation. Each party waives, and shall cause its insurance carrier to waive, any right of recovery against the other for any loss of or damage to property which loss or damage is (or, if the insurance required hereunder had been carried, would have been) covered by property and/or business interruption insurance referenced in 11.2.4 and 11.2.5. The failure of a party to insure its property shall not void this waiver. Neither party, nor its officers, directors, employees, managers, agents,

or contractors, shall be liable to the other for any business interruption loss incurred, and each party waives any claims against the other party, and its officers, directors, employees, managers, agents and contractors for such business interruption loss from any cause whatsoever, including, but not limited to damage caused in whole or in part, directly or indirectly, by the negligent acts of the other party at the Premises or the Project. For purposes of this Section 11.3.5, any deductible with respect to a party's insurance shall be deemed covered by, and recoverable by such party under, valid and collectable policies of insurance.

- 11.3.6 Notification of Incidents. Tenant shall notify Landlord as soon as practicable after the occurrence of any accidents or incidents in the Premises, the Building, Common Areas, or the Project which could give rise to a claim under any of the insurance policies required under this Section 11.

## 12. REPAIRS AND MAINTENANCE.

- 12.1 **Tenant Obligations.** Except as otherwise expressly provided in Section 12.2, Tenant, at Tenant's sole cost and expense, shall keep and maintain the interior and exterior of the Premises in good, clean and safe order, condition and repair, including replacement (as necessary), including, without limitation, the following: loading docks, roll up doors and ramps; floors, subfloors and floor coverings; walls and wall coverings (excluding painting of exterior walls); doors, locks and other locking devices, windows, glass and plate glass; ceilings, and lighting systems; all plumbing, electrical and mechanical equipment and systems inside or exclusively serving the Premises; all heating, ventilating and air conditioning equipment and systems inside or exclusively serving the Premises (subject to Landlord's rights described below); and wiring, appliances and devices using or containing refrigerants, or otherwise attached to or part of Tenant's trade-fixtures and/or equipment. Tenant shall enter into a regularly scheduled preventive maintenance/service contract ("**Service Contract**") with a maintenance contractor reasonably acceptable to Landlord for servicing all heating ventilation, and air conditioning systems and equipment inside or exclusively serving the Premises (collectively, the "**HVAC System**"), if applicable, which Service Contract shall at a minimum comply with the requirements set forth on **Exhibit I** attached hereto. Tenant shall deliver full and complete copies of the Service Contract (and any other service contracts entered into by Tenant) to Landlord within one hundred twenty (120) days after the Commencement Date. Notwithstanding the foregoing, if Tenant fails to maintain a Service Contract as required by this Section 12.1, Landlord may elect to maintain the Service Contract, in which case Tenant shall reimburse Landlord within thirty (30) days after Landlord's demand for the reasonable and actual cost of the Service Contract and shall promptly undertake and complete the repairs and/or replacements recommended by such maintenance contractor during the Term of this Lease. All repairs and replacements by Tenant shall be made and performed: (1) at Tenant's cost and expense and at such time and in such manner as Landlord may reasonably designate, (2) by certified contractors or mechanics reasonably approved by Landlord, which such approval shall not be withheld, conditioned or delayed, (3) so that same shall be at least similar in quality, value and utility to the original work or installation, (4) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the Building or any of the mechanical, electrical, plumbing or other systems in the Building, Property or the Project, and (5) in accordance with the Rules and Regulations and all Applicable Laws. In the event Tenant fails, in the reasonable judgment of Landlord, to maintain the Premises in accordance with the obligations under this Lease, which failure continues at the end of fifteen (15) business days following Tenant's receipt of written notice from Landlord stating the nature of the failure and Tenant has failed to commence a cure, or in the case of an emergency immediately without prior notice, Landlord shall have the right to enter the Premises and perform such maintenance, repairs or refurbishing at Tenant's sole cost and expense. Tenant

shall maintain written records of maintenance and repair and shall deliver copies thereof to Landlord upon request.

- 12.2 **Landlord Obligations.** Landlord shall assign all existing and continuing warranties associated with the Premises to Tenant to the extent permissible, and if not permissible, Landlord shall use its best efforts to enforce such warranties for the benefit of the Tenant. Landlord shall maintain and repair damage to structural portions of the roof, skylights (unless Tenant is directly responsible for damages to skylights), foundation and load-bearing portions of walls (excluding wall coverings, painting, glass and doors) of the Building and other portions of the buildings of the Project, and Landlord shall maintain and repair the Common Areas (as herein defined); provided, (a) if such damage is caused by an act or omission of Tenant, or any Tenant Party, then such repairs shall be at Tenant's sole expense and (b) Landlord shall not be required to make any repair resulting from (1) any alteration or modification to the Building or to mechanical equipment within the Building performed by, for or because of Tenant or to special equipment or systems installed by, for or because of Tenant, (2) the installation, moving, use or operation of Tenant's Property, (3) Tenant's use or occupancy of the Premises in violation of Section 15 of this Lease, (4) fire and other casualty, except as provided by Section 16 of this Lease, or (5) condemnation, except as provided in Section 17 of this Lease. Tenant waives any right to repair the Premises, the Building, the Project and/or the Common Area at the expense of Landlord under any Applicable Laws.
- 12.3 **Landlord's Default.** Except as otherwise provided in this Lease and specifically subject to **Sections 3 and 21**, if Landlord fails in the performance of any of Landlord's obligations under this Lease and such failure continues for thirty (30) days after Landlord's receipt of written notice thereof from Tenant (or an additional reasonable time after such receipt if (i) such failure cannot be cured within such thirty (30) day period, and (ii) Landlord commences curing such failure within such thirty (30) day period and thereafter diligently pursues the curing of such failure), then Tenant shall be entitled to exercise any remedies that Tenant may have at law or in equity. Without limiting the foregoing, Landlord and Tenant agree that there are certain services which are to be performed by Landlord pursuant to this Lease and without which Tenant cannot occupy the Premises for the purpose of which it was originally leased. The services are (A) heat, water, gas, electricity, telephone and any other utilities and services used on or provided to the Premises or in the Building, including the repair and maintenance of mechanical, electrical and plumbing systems and the heating, ventilation and air-conditioning (HVAC) systems (to the extent that the delivery of such services is the obligation of Landlord pursuant to the terms of this Lease); (B) repairs and maintenance of the roof, roofing structure, skylights, exterior and structural walls, as well as the structural soundness of the foundation, including correcting defects of the same and/or replacing the same; and (C) continued access to the Building and Premises inclusive of the maintenance and repairs to the common driveways, loading and unloading areas and parking areas (collectively, the "**Critical Services**"). If Landlord fails to provide a Critical Service to the Premises or any portion thereof (a "**Critical Service Failure**") within the stated period in this Section after receipt of written notice from Tenant (but in no event earlier than five (5) business days after receipt of such notice except in cases where there is an immediate threat of material and substantial property damage or immediate threat of bodily injury, in which case such shorter period of time as is reasonable under the circumstances), then Tenant may, at its option and without limiting all other available remedies, unless Landlord commences to cure such Critical Service Failure within such five (5) business day period (or immediately, in the case of an immediate threat or material and substantial property damage or immediate threat of bodily harm) and proceeds diligently to complete such cure, proceed to undertake such repairs and/or maintenance upon delivery of an additional two (2) business days' notice to Landlord that Tenant is taking such required action (provided, however, that no additional notice shall be required in the event of an emergency which threatens life or where there is imminent danger to property). If such Critical Service Failure is not cured prior to the expiration of such two (2) business day period (or the initial

notice and repair period set forth above in the event of emergencies where no second notice is required) (the "**Outside Repair Period**"), then Tenant shall be entitled to reimbursement by Landlord of Tenant's actual, reasonable (under the circumstances), and documented costs and expenses in performing such maintenance and/or repairs plus an amount not to exceed five percent (5%) of such costs for overhead and time of Tenant to manage and undertake Landlord's obligations. Such reimbursement shall be made within thirty (30) days after Landlord's receipt of Tenant's invoice of such costs and expenses. Any amounts not reimbursed by Landlord within such thirty (30) day period will be assessed a late charge equal to five percent (5%) of such delinquent sum and such delinquent sum shall also bear interest from the date such amount was due until paid in full at the lesser of (i) fifteen percent (15%) per annum; or (ii) at the Applicable Interest Rate until paid by Landlord. In the event Tenant undertakes such repairs and/or maintenance, and such work will affect the Building's structure or Building's systems, Tenant shall use only those unrelated third party contractors used by Landlord in the Building for such work unless such contractors are unwilling or unable to perform such work at competitive prices, in which event Tenant may utilize the services of any other qualified contractor which normally and regularly performs similar work in comparable first-class buildings in Clark County, Nevada. Tenant shall comply with the other terms and conditions of this Lease if Tenant takes the required action, except that Tenant is not required to obtain Landlord's consent for such repairs. TENANT SHALL INDEMNIFY AND DEFEND THE LANDLORD PARTIES AND OTHER TENANTS AND OCCUPANTS OF THE PROJECT FROM AND AGAINST ALL CLAIMS IN CONNECTION WITH OR ARISING OUT OF TENANT'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT IN THE CURE OF OR ATTEMPT TO CURE ANY CRITICAL SERVICE FAILURE.

### 13. ALTERATIONS.

- 13.1 **Trade Fixtures; Alterations.** Subject to limitations set forth in this Lease, Tenant may install necessary trade fixtures, equipment and furniture in the Premises, provided that all alterations are done in compliance with **Exhibit F** and such items are installed and are removable without structural or material damage to the Premises, or the Building. Except for non-structural alterations or additions costing less than Fifteen Thousand and 00/100 Dollars (\$15,000.00) which are not visible from the outside of the Premises through the windows of the Building, Tenant shall not construct, nor allow to be constructed, any alterations or physical additions in, about or to the Premises without obtaining the prior written consent of Landlord, which consent shall be conditioned upon Tenant's compliance with the provisions of **Exhibit F** and any other applicable requirements of Landlord regarding construction of improvements and alterations. If Landlord does not respond to a written request from Tenant made in accordance with **Exhibit F** within ten (10) business days, then Landlord shall be deemed to approve such request. If requested by Landlord, Tenant shall file a notice of completion after completion of such work and provide Landlord with a copy thereof.
- 13.2 **Damage; Removal.** Upon the expiration or earlier termination of this Lease, subject to normal wear and tear, Tenant shall remove any or all trade fixtures, alterations, additions, improvements and partitions made or installed by or for the benefit of Tenant ("**Alteration(s)**") and repair all damage caused by the installation or removal thereof; provided, however, Landlord may require Tenant to have all or any portion of such items designated by Landlord at the time of providing its consent to the Alteration to remain at the Premises, in which event they shall be and become the property of Landlord upon the expiration or earlier termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner and so as not to cause any damage to the Premises, the Building, the Common Area, or the Project whatsoever.
- 13.3 **Liens.** Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished and services rendered at the request of Tenant and shall keep the Premises, the

Building, and the Project, free of all mechanics' and materialmen's liens in connection therewith. Tenant shall remove any such lien within ten (10) business days after notice from Landlord, and if Tenant fails to do so, an Event of Default by Tenant shall have occurred, and in addition, Landlord, without limiting its remedies, may bond, insure over or otherwise pay the amount necessary to cause such removal, whether or not such lien is valid. The amount so paid, together with reasonable attorneys' fees and expenses, shall be reimbursed by Tenant upon demand. Tenant shall provide at least ten (10) days prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. Tenant shall defend, indemnify and hold harmless Landlord and its agents and representatives from and against all claims, demands, causes of action, suits, judgments, damages and expenses (including attorneys' fees) in any way arising from or relating to the failure by Tenant to pay for any work performed, materials furnished, or obligations incurred by or at the request of any of Tenant's respective agents, contractors, employees, licensees, guests and invitees. This indemnity provision shall survive termination or expiration of this Lease. Pursuant to Nevada Revised Statutes ("NRS") §108.234(3)(e), Landlord hereby informs Tenant that if Tenant undertakes the work, Tenant must comply with the requirements of NRS §108.2403. Tenant shall take all actions necessary under Nevada law to ensure that no liens encumbering Landlord's interest in the Premises arise as a result of the construction of the work, which actions shall include, without limitation, the recording of a notice of posted security in the Official Records of Clark County, Nevada, in accordance with NRS §108.2403, and either (i) establish a construction disbursement account pursuant to NRS §108.2403(1)(b)(1), or (ii) furnish and record, in accordance with NRS §108.2403(1)(b)(2), a surety bond for the prime contract for the construction of tenant improvements that meets the requirements of NRS §108.2415. Tenant may not begin construction of any tenant improvements in the Premises until Tenant has delivered evidence satisfactory to Landlord that Tenant has complied with the terms of this Section 13.3. Failure by Tenant to comply with the terms of this Section 13.3 shall permit Landlord to declare an event of default hereunder.

14. **LANDLORD'S RIGHTS.** Landlord reserves the right to enter the Premises upon reasonable advance notice to Tenant of no less than two (2) business days (or without notice in case of an emergency) and provided that Landlord shall use best efforts not nor materially or adversely impact Tenant's business and operation to undertake the following all without abatement of rent or liability to Tenant, except as provided in this Lease: inspect the Premises and/or the performance by Tenant of the terms and conditions hereof; make such alterations, repairs, improvements or additions to the Premises as required or permitted hereunder; change boundary lines of the Land so long as such change does not materially and adversely impact Tenant's use of the parking area and/or access to the Premises; install, use, maintain, repair, alter, relocate or replace any pipes, ducts, conduits, wires, equipment and other facilities in the Common Area or the Building; install, maintain and operate conduit cabling within the utility and/or conduit ducts and risers within the Building, as well as grant lease, license or use rights to third parties, to utilize the foregoing easements or licenses on the Land, the Property and/or the Project; grant easements, rights of way, utility raceways and make dedications; dedicate for public use portions of the Land, the Property and/or the Project not materially and adversely impact Tenant's access to the Premises; and record parcel maps, restrictions, covenants, conditions and restrictions affecting the Land, the Property and/or the Project and/or amendments to existing CC&Rs which do not unreasonably interfere with Tenant's use of the Premises or impose additional material monetary obligations on Tenant; change the name of the Building, the Property and/or the Project; affix reasonable signs and displays on the Building and/or the Land (including rental signs); and, show the Premises to prospective purchasers, current or prospective investors, Mortgagees, ground lessees or insurers, or, during the last twelve (12) months of the Term (or following any Event of Default), prospective tenants. If reasonably necessary, Landlord may temporarily close all or a portion of the Premises to perform repairs, alterations and additions; provided, however, except in emergencies, Landlord will not close the Premises if the work can reasonably be completed on weekends and after

normal business hours. Notwithstanding the foregoing, in the event of any repair or alteration to the Premises by Landlord allowed in this **Section 14**, Landlord will, other than in an emergency, provide Tenant with thirty (30) days' notice of such repair, maintenance or alteration to allow Tenant to mitigate and reduce any operational impact on its business. Entry by Landlord shall not constitute a constructive eviction or entitle Tenant to an abatement or reduction of Rent, except as provided in this Lease.

**15. ENVIRONMENTAL MATTERS.**

15.1 **Hazardous Materials.** Tenant shall not cause nor permit, nor allow any of Tenant's or Tenant's affiliates' employees, agents, customers, visitors, invitees, licensees, contractors, assignees or subtenants (individually, a "**Tenant Party**" and collectively, "**Tenant's Parties**") to cause or permit, any Hazardous Materials (as defined herein) to be brought upon, stored, manufactured, generated, blended, handled, recycled, treated, disposed or used on, under or about the Premises, the Building, the Common Area, or the Project, except for routine office and janitorial supplies in usual and customary quantities stored and motor vehicle fuel stored in fuel tanks of motor vehicles used on site, including forklift propane tanks, used and disposed of in accordance with all applicable Environmental Laws, and Hazardous Materials contained in products stored by Tenant in their original, sealed, and unopened containers in accordance with Environmental Laws, subject to Tenant's compliance with Section 15.3 below. Tenant shall not install, operate or maintain any above or below grade tank, sump, pit, pond, lagoon or other storage or treatment vessel or device within the Project without Landlord's prior written consent which may be withheld in Landlord's sole discretion. As used herein, the term "**Environmental Laws**" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "**Hazardous Materials**" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Laws, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) and explosives, flammables, or radioactive substances of any kind. As defined in Environmental Laws, Tenant is and shall be deemed to be the "operator" of Tenant's "facility" and the "owner" of all Hazardous Materials brought on the Premises by Tenant, or Tenant's Parties, and the wastes, by-products, or residues generated, resulting, or produced therefrom. Tenant and Tenant's Parties shall comply with all Environmental Laws and promptly notify Landlord in writing of the violation of any Environmental Law or presence of any Hazardous Materials, other than office and janitorial supplies as permitted above, in, on, under or about the Premises or the improvements or the soil or groundwater thereunder. Tenant shall neither create or suffer to exist, nor permit any Tenant Party to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind with respect to the Project, including without limitation, any lien imposed pursuant to Section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 9607(1)) or any similar state statute. Landlord shall have the right to enter upon and inspect the Premises and to conduct tests, monitoring and investigations. If such tests indicate the presence of any environmental condition caused or exacerbated by Tenant or any Tenant Party or arising during Tenant's or any Tenant Party's occupancy, Tenant shall reimburse Landlord for the cost of conducting such tests. The phrase "**environmental condition**" shall mean any adverse condition relating to any Hazardous Materials or the environment, including surface water, groundwater, drinking water supply, land, surface or subsurface strata or the ambient air and includes air, land and water pollutants, noise, vibration, light and odors. In the event of any such environmental condition, Tenant shall promptly notify both the property manager and the Landlord and shall promptly take any and all steps necessary to rectify the

same to the satisfaction of the applicable agencies and Landlord, or shall, at Landlord's election, reimburse Landlord, upon demand, for the cost to Landlord of performing work. The reimbursement shall be paid to Landlord in advance of Landlord's performing such work, based upon Landlord's reasonable estimate of the cost thereof; and upon completion of such work by Landlord, Tenant shall pay to Landlord any shortfall promptly after receipt of Landlord's bills therefor or Landlord shall promptly refund to Tenant any excess deposit, as the case may be.

- 15.2 **Indemnification.** Tenant shall indemnify, protect, defend (by counsel acceptable to Landlord) and hold harmless the Indemnitees from and against any and all Losses of or in connection with (1) Tenant and/or any Tenant Party's breach of this Section 15, or (2) the presence of Hazardous Materials on, under or about the Premises or other property as a result (directly or indirectly) of Tenant's and/or any Tenant Party's activities, or failure to act, in connection with the Premises. Landlord reserves the right to retain counsel for its defense, in which case Tenant shall be responsible for the cost of such defense. This indemnity shall include, without limitation, any Losses arising from or in connection with (i) the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, (ii) the cost of any required or necessary repair, cleanup or detoxification, and the preparation and implementation of any closure, monitoring or other required plans, whether such action is required or necessary prior to or following the termination of this Lease, (iii) lost profits, consequential damages, the cost of demolition or rebuilding any improvements on real property, interest, penalties and damages arising from claims brought by or on behalf of employees of Tenant (with respect to which Tenant waives any right to raise as a defense against Landlord any immunity to which it may be entitled under any industrial or worker's compensation laws), (iv) fees, costs or expenses incurred for the services of attorneys, consultants, contractors, experts, laboratories, and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of such Environmental Laws, and (v) diminution in the fair market value of the Project including without limitation any reduction in fair market rental value or life expectancy of the Project or the improvements located thereon or the restriction on the use of or adverse impact on the marketing of the Project or any portion thereof. Neither the written consent by Landlord to the presence of Hazardous Materials on, under or about the Premises, nor the strict compliance by Tenant with all Environmental Laws, shall excuse Tenant from Tenant's obligation of indemnification pursuant hereto. Tenant's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Lease. Neither the written consent by Landlord to the presence of Hazardous Materials on, under or about the Premises, nor the strict compliance by Tenant with all Environmental Laws, shall excuse Tenant from Tenant's obligation of indemnification pursuant hereto. Tenant's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Lease.
- 15.3 **Environmental Questionnaire Disclosure.** Simultaneously with the execution of this Lease, Tenant shall complete, execute and deliver to Landlord a Hazardous Materials Survey Form in the form of **Exhibit G** attached hereto ("**Survey Form**"), and Tenant shall certify to Landlord that all information contained in the Survey Form is true and correct. The completed Survey Form shall be deemed incorporated into this Lease for all purposes, and Landlord shall be entitled to rely on the information contained therein. Within ten (10) days following receipt by Tenant of a written request therefor from Landlord (which request shall not be made more often than annually), Tenant shall disclose to Landlord in writing the names and amounts of all Hazardous Materials, or any combination thereof, which were stored, generated, used or disposed of on, under or about the Premises for the twelve (12) month period prior to and after each such request, or which Tenant intends to store, generate, use or dispose of on, under or about the Premises. At Landlord's option, Tenant's disclosure obligation under this Subparagraph shall include the requirement that Tenant update, execute and deliver to Landlord the Survey Form, as the same may be modified by Landlord from time to time.



15.4 **Surrender.** In the ninety (90) days prior to the expiration or termination of the Lease, and for up to ninety (90) days after the later to occur of: (i) Tenant's full surrender to Landlord of exclusive possession of the Premises; and (ii) the termination of this Lease, Landlord may have an environmental assessment of the Premises and the Project performed. Tenant shall perform, at its sole cost and expense, any clean-up or remedial work recommended by the consultant performing such assessment which is necessary to remove, mitigate or remediate any Hazardous Materials and/or contamination of the Premises and/or the Project caused by the acts or omissions of Tenant or any of Tenant's Parties. Tenant's obligations under this Section 15.4 shall survive the expiration or termination of this Lease.

16. **DAMAGE AND DESTRUCTION.** If at any time during the Term all or a portion of the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within sixty (60) days after Landlord becomes aware of such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is estimated to exceed one hundred (100) days from the issuance of all permits, subject to extensions for Force Majeure, Landlord or Tenant may elect to terminate this Lease. In addition, Landlord, by notice to Tenant within ninety (90) days after the date of the fire or other casualty shall have the right to terminate this lease if: (1) any Mortgagee requires that the insurance proceeds be applied to the payment of the mortgage debt or ground lease, or (2) a material uninsured loss to the Building or Premises occurs. If neither party either elects to terminate this Lease as provided above or if neither party has the right to terminate this Lease as provided above, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly commence to restore the Premises, subject to delays arising from the collection of insurance proceeds or from Force Majeure events. Such restoration shall be to substantially the same condition that existed prior to the fire or other casualty, except for modifications required by Applicable Laws. Upon notice from Landlord, Tenant shall assign or endorse over to Landlord (or to any party designated by Landlord) all property insurance proceeds payable to Tenant under Tenant insurance with respect to any Alterations, provided if the estimated cost to repair such Alterations exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, the excess cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's commencement of repairs or Tenant may determine not to restore such Alterations. Notwithstanding the foregoing, either party may terminate this Lease if the Premises are damaged during the last year of the Term and Landlord reasonably estimates that it will take more than three (3) months to repair such damage. Provided no Event of Default by Tenant has occurred, Base Rent and Tenant's Proportionate Share, or Tenant's Project Share, of Operating Expenses and Real Property Taxes shall be abated for the period of repair and restoration commencing on the date of such casualty event in the proportion which the area of the Premises, if any, which is untenable bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant. Tenant agrees that the terms of this Section 16 shall govern any damage or destruction and shall accordingly supersede any contrary statute or rule of law.

17. **CONDEMNATION.** If any part of the Premises or the Building should be taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "**Taking**" or "**Taken**"), and the Taking would materially interfere with or impair Landlord's ownership or operation of the Property and/or the Project (as determined by Landlord) or the Tenant's use and operation of the Premises, Building or Project, then upon written notice by Landlord this Lease shall terminate and Base Rent and Tenant's Proportionate Share and Tenant's Project Share of Operating Expenses and Real Property Taxes shall be apportioned as of said date. If part of the Premises or the Building shall be Taken and such condemnation does not materially interfere with or impair Landlord's ownership or operation of the Property and/or the Project or the Tenant's use and operation of the Premises, Building or Project, and this Lease is not terminated as provided above, the Base Rent and Tenant's Proportionate Share and Tenant's Project Share of Operating Expenses and Real Property Taxes payable hereunder during the unexpired Term shall be reduced to account for any reduction in the square footage of the Premises, Building or Project, as

applicable. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's trade fixtures, if a separate award for such items is made to Tenant. If only a part of the Premises is subject to a Taking and this Lease is not terminated, Landlord, with reasonable diligence, will restore the remaining portion of the Premises as nearly as practicable to the condition immediately prior to the Taking. Tenant agrees that the terms of this Section 17 shall govern any Taking and shall accordingly supersede any contrary statute or rule of law.

**18. DEFAULT.**

18.1 **Tenant Event of Default.** The occurrence of any of the following events shall, at Landlord's option, constitute an "Event of Default":

- 18.1.1 Tenant shall fail to pay any installment of Base Rent or any other payment required herein when due, and such failure shall continue for a period of three (3) days after written notice to Tenant.
- 18.1.2 Tenant or any guarantor or surety of Tenant's obligations hereunder shall (1) make a general assignment for the benefit of creditors; (2) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively, a "proceeding for relief"); (3) become the subject of any proceeding for relief which is not dismissed within sixty (60) days of its filing or entry; or (4) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).
- 18.1.3 Any insurance required to be maintained by Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease.
- 18.1.4 Subject to an allowed assignment or sublease under the terms of this Lease, Tenant shall not occupy or shall vacate the Premises whether or not Tenant is in monetary or other default under this Lease; provided, however, that Tenant's vacating of the Premises shall not constitute an Event of Default if, prior to vacating the Premises, Tenant has made arrangements reasonably acceptable to Landlord to (1) ensure that Tenant's insurance for the Premises will not be voided or cancelled with respect to the Premises as a result of such vacancy, (2) ensure that the Premises are secured and not subject to vandalism, and (3) ensure that the Premises will be properly maintained after such vacation, including, but not limited to, keeping the heating, ventilation and cooling systems maintenance contracts required by this Lease in full force and effect.
- 18.1.5 There shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease except as otherwise permitted in this Lease.
- 18.1.6 Tenant breaches a particular provision hereof (other than a provision requiring payment of Rent) and such failure shall continue for a period of three (3) days after receipt of written notice to Tenant on three (3) separate occasions during any twelve (12)-month period, and in such event, Tenant's subsequent breach of such provision shall be, at Landlord's option, an incurable Event of Default.

- 18.1.7 Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Section 18.1, and except as otherwise expressly provided herein, such default shall continue for more than thirty (30) days after Landlord shall have given Tenant written notice of such default.
- 18.1.8 Tenant or any affiliate of Tenant is in default beyond any notice and cure period under any other provision of this Lease or under any other lease or agreement with Landlord at the Building or the Project.
- 18.2 **Landlord's Remedies.** Upon any Event of Default, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (which shall be cumulative and nonexclusive), the option to pursue any one or more of the following remedies (which shall be cumulative and nonexclusive) without any notice or demand subject to Landlord's obligations to mitigate damages and/or Losses, as outlined in the Lease:
- 18.2.1 Landlord may terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy it may have for possession or arrearages in Rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim of damages therefor other than for negligence and willful misconduct of Landlord, its agents and/or contractors; and Landlord may recover from Tenant the following: (a) the worth at the time of award of the unpaid Rent which had been earned at the time of such termination; (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom, including brokerage commissions, advertising expenses, expenses of restore any portion of the Premises back to its original condition as of the Commencement Date (subject to normal wear and tear) ("**Costs of Reletting**"); plus (e) at Landlord's option, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by law. As used in subsection (a) and subsection (b) above, the "**worth at the time of award**" shall be computed by allowing interest at a rate per annum equal to the lesser of (i) the annual "Bank Prime Loan" rate cited in the Federal Reserve Statistical Release Publication G.13(415), published on the first Tuesday of each calendar month (or such other comparable index as Landlord shall reasonably designate if such rate ceases to be published) plus one (1) percentage point, or (ii) the Applicable Interest Rate. As used in subsection (c) above, the "**worth at the time of award**" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.
- 18.2.2 If Landlord does not elect to terminate this Lease on account of any Event of Default by Tenant, Landlord may, from time to time, without terminating this Lease, terminate Tenant's right to possession of the Premises and, in compliance with Applicable Laws, remove Tenant, Tenant's property and any parties occupying the Premises. Landlord will use commercially reasonable efforts to relet all or any part of the Premises, without notice to Tenant, for such period of time and on such terms and conditions (which may include concessions, free rent and work allowances) as Landlord shall reasonably determine. Landlord may collect and receive all rents and other income from the

reletting. Tenant shall pay Landlord on demand all past due Rent, all Costs of Reletting and any deficiency arising from the reletting or failure to relet the Premises. The re-entry or taking of possession of the Premises shall not be construed as an election by Landlord to terminate this Lease.

- 18.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Section 18.2.1 and Section 18.2.2, or any law or other provision hereof), without prior demand or notice except as required by law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.
- 18.2.4 Unless Landlord provides Tenant with express notice to the contrary, no re-entry, repossession, repair, maintenance, change, alteration, addition, reletting, appointment of a receiver or other action or omission by Landlord shall (a) be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, or (b) operate to release Tenant from any of its obligations hereunder.
- 18.2.5 If Landlord elects to cure such Event of Default by Tenant, Landlord may, at Landlord's option, enter into and upon the Premises and correct the same without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage or interruption of Tenant's business resulting therefrom. If any lien is filed and not cured within the fifteen (15) day time period set forth above, then Landlord may take such action as may be necessary to remove such lien. Tenant agrees to pay Landlord an amount equal to one hundred ten percent (110%) of any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, including without limitation, attorney's fees, together with interest thereon at the Applicable Interest Rate from the date of expenditure.
- 18.2.6 Exercise by Landlord of any one (1) or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or by operation of law, it being understood that except as provided in Section 18.2.1 and Section 18.2.2 above, such surrender and/or termination can be effected only by the written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord's right to enforce one (1) or more of its rights in connection with any subsequent Event of Default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Any reletting of the Premises shall be on such terms and conditions as Landlord may reasonably determine (including without limitation a term different than the remaining Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Project before

reletting the Premises). Landlord shall not be liable for Landlord's failure to relet the Premises or collect rent due in respect of such reletting.

**19. ASSIGNMENT AND SUBLETTING.**

- 19.1 Except as permitted under this **Article 19**, Tenant shall not assign, sublet, convey, mortgage, license or otherwise transfer (any of the foregoing, a “**Transfer**”), whether voluntarily or involuntarily or by operation of law, the Premises or any part thereof without Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. A “Permitted Transfer” shall be deemed to mean: (i) the merger of Tenant with any other entity or the indirect or direct transfer of any controlling or managing ownership or beneficial interest in Tenant, and (ii) the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located at the Premises. If Tenant desires to undertake a Transfer, Tenant shall give Landlord prior written notice thereof with copies of all related documents and agreements associated with the Transfer, including without limitation, the financial statements of any proposed assignee, subtenant or transferee, at least fifteen (15) days prior to the anticipated effective date of the Transfer. Tenant shall pay Landlord's reasonable attorneys' and financial consultant's fees incurred in the review of such documentation whether or not a Transfer is consummated or approval is granted, not to exceed \$500 per occurrence. If Landlord fails to notify Tenant in writing of Landlord's approval or disapproval of any proposed Transfer within fifteen (15) business days after Landlord's receipt of all required documentation, Landlord shall be deemed to have approved such Transfer. If Landlord approves of such Transfer, the parties shall enter into a consent agreement in a form reasonably designated by Landlord, and in the case of an assignment, the assignee shall assume in writing, for Landlord's benefit, all of Tenant's obligations hereunder. Any purported Transfer contrary to the provisions hereof shall be void and constitute an Event of Default. This Lease may not be assigned by operation of law. In the event of an assignment of this Lease or subletting of all of the Rentable Square Footage of the Premises for the remaining Term (excluding unexercised options), Landlord shall have the right to recapture the portion of the Premises that Tenant is proposing to assign or sublease. If Landlord exercises its right to recapture, this Lease shall automatically be terminated with respect to the Premises effective on the proposed effective date of the Transfer, although Landlord may require Tenant to execute a reasonable amendment or other document reflecting such termination. If Tenant receives rent or other consideration for any such Transfer in excess of the Rent, or in the case of a sublease of a portion of the Premises, in excess of such Rent that is fairly allocable to such portion, after appropriate adjustments to assure that all other payments required hereunder are appropriately taken into account, Tenant shall pay Landlord fifty percent (50%) of the difference between each such payment of rent or other consideration and the Rent required hereunder, after Tenant's recovery of its actual and reasonable attorney's fees, brokerage commissions and improvement allowances, improvement costs or other concessions incurred directly in connection with such assignment or subletting, determined on a straight-line basis. Subject to Landlord exercising its right to recapture the Premises, Tenant shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment had been made, and in no event shall any assignment or other Transfer release or relieve Tenant from any obligation under this Lease. Tenant shall not collaterally assign, mortgage, pledge, hypothecate or otherwise encumber this Lease or any of Tenant's rights hereunder without the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion.
- 19.2 Notwithstanding anything to the contrary contained in this Section 19, neither Tenant nor any other person having a right to possess, use, or occupy (for convenience, collectively referred to in this subsection as “**Use**”) the Premises shall enter into any lease, sublease, license, concession or other agreement for Use of all or any portion of the Premises which provides for rental or other payment for such Use based, in whole or in part, on the net income or profits derived by any person that leases, possesses, uses, or occupies all or any portion of the Premises

(other than an amount based on a fixed percentage or percentages of receipts or sales), and any such purported lease, sublease, license, concession or other agreement shall be absolutely void and ineffective as a Transfer of any right or interest in the Use of all or any part of the Premises.

- 19.3 Notwithstanding anything in this **Article 19** to the contrary, provided no Event of Default exists or is continuing under this Lease, Tenant may, without Landlord's consent, but after providing written notice to Landlord pursuant to the notice provision of **Section 19.1**, assign this Lease or sublet all or any portion of the Premises to any Related Entity (as herein defined) provided that (i) such Related Entity is not a governmental entity or agency; (ii) such Related Entity's use of the Premises would not cause Landlord to be in violation of any exclusivity agreement within the Project; and (iii) such Related Entity provides evidence of its credit worthiness and financial stability to maintain the financial obligations under the Lease with proof satisfactory to Landlord, determined in its reasonable discretion, of such sufficient net worth having been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction. "**Related Entity**" shall be defined as any parent company, subsidiary, affiliate or related corporate entity of Tenant that controls, is controlled by, or is under common control with Tenant.
- 19.4 Notwithstanding anything in this **Article 19** to the contrary, provided no Event of Default exists or is continuing under this Lease, Tenant may, without Landlord's consent, but after providing written notice to Landlord pursuant to the notice provision in **Section 19.1**, assign this Lease or sublet all or any portion of the Premises in connection with a Permitted Transfer provided that (i) such Related Entity is not a governmental entity or agency; (ii) such Related Entity's use of the Premises would not cause Landlord to be in violation of any exclusivity agreement within the Project; and (iii) the net worth (computed in accordance with generally accepted accounting principles exclusive of goodwill) of any assignee after such transfer is greater than or equal to the greater of (a) the net worth of Tenant as of the Effective Date; or (b) the net worth standards of Tenant immediately after such transfer are acceptable to Landlord in its reasonable determination with evidence of such net worth delivered to Landlord at least ten (10) days prior to the effective date of such transfer.

## **20. ESTOPPEL, ATTORNMENT AND SUBORDINATION.**

- 20.1 **Estoppel.** Within ten (10) business days after written request by Landlord, Tenant shall execute and deliver a commercially reasonable certificate to those parties as are reasonably requested by Landlord (including a Mortgagee or prospective purchaser). Without limitation, such estoppel certificate may include a certification as to the status of this Lease, the existence of any Event of Defaults and the amount of Rent that is due and payable. Tenant's failure to deliver said statement in such time period shall be an Event of Default hereunder and shall be conclusive upon Tenant that (1) this Lease is in full force and effect, without modification except as may be represented by Landlord; (2) there are no uncured Event of Defaults in Landlord's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (3) no more than one month's Base Rent has been paid in advance.
- 20.2 **Subordination.** This Lease shall unconditionally be and at all times remain subject and subordinate to all ground leases, master leases and all mortgages and deeds of trust which now or hereafter affect the Premises, or the Project or Landlord's interest therein (including any modifications, renewals or extensions thereof and all amendments thereto) (collectively, referred to as a "**Mortgage**"), all without the necessity of Tenant's executing further instruments to effect such subordination. The party having the benefit of a Mortgage shall be referred to as a "**Mortgagee**". If requested, Tenant shall execute and deliver to Landlord within ten (10) days after Landlord's request whatever documentation that may reasonably be required to further effect the provisions of this paragraph including a Subordination, Nondisturbance and Attornment Agreement ("**SNDA**") in the form reasonably required by the applicable Mortgagee. Notwithstanding anything contained in this Lease to the contrary, (1) the obligation

for commissions under Section 25.19 shall not be binding on, and will not be enforceable against, any of Owner's Mortgagees, and (2) such commission obligation shall be unconditionally subordinate to the lien of any Mortgage, and any commissions otherwise payable under this Lease shall not be due or payable after an event of default under any such mortgage or other security interest. Notwithstanding anything to the contrary contained in this Section 20.2, the holder of any such Mortgage may at any time subordinate its Mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of executing, delivery or recording and in the event such Mortgagee shall have the same rights with respect to this Lease as though this Lease has been executed prior to the executing, delivery and recording of such Mortgage and had been assigned to such Mortgagee.

20.3 **Attornment.** Tenant hereby agrees that Tenant will recognize as its landlord under this Lease and shall attorn to any person succeeding to the interest of Landlord in respect of the land and the buildings governed by this Lease upon any foreclosure of any Mortgage upon such land or buildings or upon the execution of any deed in lieu of foreclosure in respect to such Mortgage. Tenant shall pay all rental payments required to be made pursuant to the terms of this Lease for the duration of the term of this Lease. Tenant's attornment shall be effective and self-operative without the execution of any further instrument immediately upon Mortgagee's succeeding Landlord's interest in this Lease and giving written notice thereof to Tenant. If requested, Tenant shall execute and deliver an instrument or instruments confirming its attornment as provided for herein; provided, however, that no such Mortgagee or successor- in-interest shall be bound by any payment of Base Rent for more than one (1) month in advance, or any amendment or modification of this Lease made without the express written consent of such Mortgagee where such consent is required under applicable loan documents. Mortgagee shall not be liable for, nor subject to, any offsets or defenses which Tenant may have by reason of any act or omission of Landlord under this Lease, nor for the return of any sums which Tenant may have paid to Landlord under this Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Landlord to Mortgagee. If Mortgagee, by succeeding to the interest of Landlord under this Lease, should become obligated to perform the covenants of Landlord hereunder, then, upon, any further transfer of Landlord's interest by Mortgagee, all such obligations shall terminate as to Mortgagee.

21. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD) SHALL BE LIMITED TO THE LESSER OF (A) THE INTEREST OF LANDLORD IN THE BUILDING, OR (B) THE EQUITY INTEREST LANDLORD WOULD HAVE IN THE BUILDING IF THE BUILDING WERE ENCUMBERED BY THIRD PARTY DEBT IN AN AMOUNT EQUAL TO 70% OF THE VALUE OF THE BUILDING. TENANT SHALL LOOK SOLELY TO LANDLORD'S INTEREST IN THE BUILDING FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST LANDLORD OR ANY LANDLORD INDEMNITEES. NEITHER LANDLORD NOR ANY LANDLORD INDEMNITEES SHALL BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY, AND IN NO EVENT SHALL LANDLORD OR ANY LANDLORD INDEMNITEES OR MORTGAGEES BE LIABLE TO TENANT FOR LOST PROFIT, DAMAGE TO OR LOSS OF BUSINESS OR ANY FORM OF SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE. BEFORE FILING SUIT FOR AN ALLEGED DEFAULT BY LANDLORD, TENANT SHALL GIVE LANDLORD AND THE MORTGAGEE(S) WHOM TENANT HAS BEEN NOTIFIED HOLD MORTGAGES, NOTICE AND REASONABLE TIME TO CURE THE ALLEGED DEFAULT. WHENEVER LANDLORD TRANSFERS ITS INTEREST, LANDLORD SHALL BE AUTOMATICALLY RELEASED FROM FURTHER PERFORMANCE UNDER THIS LEASE AND FROM ALL FURTHER LIABILITIES AND EXPENSES HEREUNDER AND THE TRANSFEREE OF LANDLORD'S INTEREST SHALL ASSUME ALL LIABILITIES AND OBLIGATIONS OF LANDLORD HEREUNDER FROM THE DATE OF SUCH TRANSFER.

22. **HOLDING OVER.** If Tenant holds over the Premises or any part thereof after expiration of the Term, such holding over shall be a tenancy at sufferance only, for the entire Premises, subject to the terms and conditions of this Lease, provided that, Tenant shall pay monthly Base Rent and Additional Rent (determined on a per month basis without reduction for partial months during the holdover) equal to one hundred fifty percent (150%) of the Base Rent and Additional Rent in effect immediately prior to such holding over. This Section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Term except as specifically set forth above. If Tenant fails to surrender the Premises upon expiration or earlier termination of this Lease, and if such failure continues for more than ninety (90) days after the expiration or earlier termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all Losses (including without limitation consequential damages) resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or earlier termination of this Lease and any related attorneys' fees and brokerage commissions.
23. **NOTICES.** All demands, approvals, consents or notices (collectively referred to as a "notice") shall be in writing and delivered by hand or sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service, or sent by overnight or same day courier service at the party's respective Notice Address(es) set forth in Section 1; provided, however, notices sent by Landlord regarding general Building operational matters may be sent via e-mail to the e-mail address provided by Tenant to Landlord for such purpose. In addition, if the Building is closed (whether due to emergency, governmental order or any other reason), then any notice address at the Building shall not be deemed a required notice address during such closure, and, unless Tenant has provided an alternative valid notice address to Landlord for use during such closure, any notices sent during such closure may be sent via e-mail or in any other practical manner reasonably designed to ensure receipt by the intended recipient. Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice Address of Tenant without providing a new Notice Address, 3 days after notice is deposited in the U.S. mail or with a courier service in the manner described above. Either party may, at any time, change its Notice Address (other than to a post office box address) by giving the other party written notice of the new address.
24. **SURRENDER.** Upon the expiration or earlier termination of this Lease, subject to the normal wear and tear of the Premises, Tenant shall repair any damage to and restore the condition of the Premises in accordance with Section 13.2. Tenant shall also remove all of Tenant's Property and shall repair all damage to the Premises, the Building, the Common Area, and the Project caused by the installation or removal of Tenant's Property. In no event shall Tenant remove from the Building any mechanical or electrical systems, including without limitation, any power wiring or power panels, lighting or lighting fixtures, wall coverings, drapes, blinds or other window coverings, carpets or other floor coverings, heaters, air conditioners or any other heating and air conditioning equipment, fencing or security gates, load levelers, dock lights, dock locks or dock seals, or any wiring or any other aspect of any systems within the Premises, unless Landlord specifically permits or requires such removal in writing. Tenant shall surrender the Premises, together with all keys and security codes, to Landlord broom clean, in as good a condition as when received, and in the condition described on **Exhibit H** attached hereto, ordinary wear and tear and damage by fire or casualty excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear". If Tenant fails to remove any of Tenant's Property, or to restore the Premises to the required condition, within five (5) days after termination of this Lease or Tenant's right to possession, Landlord, at Tenant's sole cost and expense, shall be entitled (but not obligated) to remove and store Tenant's Property and/or perform such restoration of the Premises. Landlord shall not be responsible for the value, preservation or safekeeping of Tenant's Property, except for the negligence or willful misconduct of Landlord, its agents or contractors. Tenant shall pay Landlord, upon demand, the expenses and storage charges incurred. If Tenant fails to remove Tenant's Property from the Premises or storage,



within 30 days after notice, Landlord may deem all or any part of Tenant's Property to be abandoned and, at Landlord's option, title to Tenant's Property shall vest in Landlord or Landlord may dispose of Tenant's Property in any manner Landlord deems appropriate.

25. **MISCELLANEOUS.**

- 25.1 **Entire Agreement.** This Lease, Addenda, Exhibits and Schedules set forth all the agreements between Landlord and Tenant concerning the Premises; and there are no agreements either oral or written other than as set forth herein. This Lease may be modified only by a written agreement signed by an authorized representative of Landlord and Tenant.
- 25.2 **Time of Essence; Business Days.** Time is of the essence with respect to Tenant's exercise of any expansion, renewal or extension rights granted to Tenant. The expiration of the Term, whether by lapse of time, termination or otherwise, shall not relieve either party of any obligations which accrued prior to or which may continue to accrue after the expiration or termination of this Lease. For all purposes herein, a "business day" shall mean Monday through Friday of each week, exclusive of New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day ("**Holidays**"). Landlord may designate additional Holidays that are commonly recognized by other industrial buildings in the area where the Building is located.
- 25.3 **Attorneys' Fees; Jury Trial Waiver.** In any action or proceeding between the parties, including any appellate or alternative dispute resolution proceeding, the substantially prevailing party may recover from the other party all of its costs and expenses in connection therewith, including reasonable attorneys' fees and costs. Tenant shall pay all reasonable attorneys' fees and other fees and costs that Landlord incurs in interpreting or enforcing this Lease or otherwise protecting its rights hereunder (a) where Tenant has failed to pay Rent when due, or (b) in any bankruptcy case, assignment for the benefit of creditors, or other insolvency, liquidation or reorganization proceeding involving Tenant or this Lease. **THE PARTIES WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE OR ANY EMERGENCY OR STATUTORY REMEDY.**
- 25.4 **Severability.** If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.
- 25.5 **Law.** This Lease shall be construed and enforced in accordance with the laws of the state in which the Premises are located, and Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such state.
- 25.6 **No Option.** Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this document shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.
- 25.7 **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, subject to compliance with the terms of Section 19, Tenant.
- 25.8 **Third Party Beneficiaries.** Nothing herein is intended to create any third party beneficiary.
- 25.9 **Memorandum of Lease.** Tenant shall not record this Lease or a short form memorandum hereof.

- 25.10 **Agency, Partnership or Joint Venture.** Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.
- 25.11 **Merger.** The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.
- 25.12 **Headings.** Section headings have been inserted solely as a matter of convenience and are not intended to define or limit the scope of any of the provisions contained therein.
- 25.13 **Security Measures.** Tenant hereby acknowledges that Landlord shall have no obligation to provide a guard service or other security measures whatsoever.
- 25.14 **No Press Release.** Any press release or other similar public statement regarding Tenant's occupancy of the Premises or this Lease shall require the prior written approval of Landlord.
- 25.15 **Signs.** All signs and graphics of every kind visible in or from public view or corridors, the Common Areas or the exterior of the Premises (whether located inside or outside of the Premises) shall be subject to Landlord's prior written approval (not to be unreasonably withheld) and shall be subject to the CC&Rs and any applicable governmental laws, ordinances, and regulations and in compliance with Landlord's signage program (if any). Upon Landlord's prior written approval, Tenant shall have the right to install signage on the Premises based on the signage design requirements at the Project (the "**Signage Criteria Manual**"), which will be provided to Tenant. Additionally, Landlord intends to, but is not obligated to, install monument signage, of which Tenant shall be entitled to one (1) position. All costs associated with fabricatings and installing Tenant specific signage shall be at Tenant's sole cost and expense. The installation of any sign on the Premises by or for Tenant shall be subject to the provisions of Section 13 (Alterations). Tenant, at Tenant's sole cost and expense, shall remove all such signs and graphics prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including without limitation, discoloration caused by such installation or removal. Unless otherwise expressly agreed herein, Landlord reserves all rights to the use of the roof of the Building, including the right to install advertising signs on the Building, including the roof, which do not unreasonably interfere with the conduct of Tenant's business. Landlord shall be entitled to all revenues from such advertising signs.
- 25.16 **Waiver.** No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.
- 25.17 **Financial Statements.** If Tenant is no longer a public company maintaining its filing obligations, Tenant shall provide, and cause each Guarantor, if applicable, to provide to any Mortgagee, any purchaser of the Building and/or the Project or Landlord, within ten (10) days after request, a current, accurate, audited financial statement for Tenant and Tenant's business (and Guarantor and Guarantor's business, if applicable) and financial statements for Tenant and Tenant's business (and Guarantor and Guarantor's business, if applicable) for each of the three (3) years prior to the current financial statement year prepared under generally accepted accounting principles consistently applied and certified by an officer of the Tenant (or Guarantor, if applicable) as being true and correct. Tenant shall also provide, and cause each Guarantor, if applicable, to provide, within said ten (10)-day period such other financial

information or tax returns as may be reasonably required by Landlord, any purchaser of the Building and/or the Project or any Mortgagee of either. Tenant hereby authorizes Landlord, and shall cause each Guarantor, if applicable, to authorize Landlord to obtain one (1) or more credit reports on Tenant (and Guarantor, if applicable) at any time, and shall execute such further authorizations as Landlord may reasonably require in order to obtain a credit report.

- 25.18 **Brokers.** Tenant represents to Landlord that it has dealt only with Tenant's Broker as its broker, agent or finder in connection with this Lease. Tenant shall indemnify, defend, and hold Landlord harmless from all claims of any brokers, agents or finders other than Tenant's Broker, claiming to have represented Tenant in connection with this Lease. Landlord shall indemnify, defend and hold Tenant harmless from all claims of any brokers, agents or finders, including Landlord's Broker, claiming to have represented Landlord in connection with this Lease. Tenant acknowledges that any affiliate of Landlord that is involved in the negotiation of this Lease is representing only Landlord, and that any assistance rendered by any agent or employee of such affiliate in connection with this Lease or any subsequent amendment or other document related hereto has been or will be rendered as an accommodation to Tenant solely in furtherance of consummating the transaction on behalf of Landlord, and not as agent for Tenant.
- 25.19 **Authorization.** If Tenant signs as a corporation, partnership, limited liability company, trust or other legal entity each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant has been and is qualified to do business in the state in which the Premises is located, that the entity has full right and authority to enter into this Lease, and that all persons signing on behalf of the entity were authorized to do so by appropriate actions. Tenant agrees to deliver to Landlord, simultaneously with the delivery of this Lease, a corporate resolution, proof of due authorization by partners, opinion of counsel or other appropriate documentation reasonably acceptable to Landlord evidencing the due authorization of Tenant to enter into this Lease.
- 25.20 **Joint and Several.** If more than one person or entity executes this Lease as Tenant, their execution of this Lease will constitute their covenant and agreement that: (i) each of them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (ii) the term "Tenant" as used in this Lease means and includes each of them jointly and severally. The act of or notice from, or the signature of any one or more of them, with respect to the tenancy of this Lease, including, but not limited to the exercise of any options hereunder, will be binding upon each and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted.
- 25.21 **Covenants and Conditions.** Each provision to be performed by either party hereunder shall be deemed to be both a covenant and a condition.
- 25.22 **Consents.** Except as otherwise provided elsewhere in this Lease, Landlord's actual reasonable costs and expenses (including, but not limited to, architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Tenant for any Landlord consent, including but not limited to, consents to an assignment, a subletting or the presence or use of a Hazardous Material, shall be paid by Tenant upon receipt of an invoice and supporting documentation therefor.
- 25.23 **Force Majeure.** "Force Majeure" as used in this Lease means delays resulting from causes beyond the reasonable control of Landlord or Tenant (as applicable), including, without limitation, any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any private party or governmental agency having jurisdiction over any portion of the Project, over the construction anticipated to occur thereon or over any uses thereof, or by delays in inspections or in issuing approvals by private parties or permits by governmental agencies, or by fire, flood, inclement weather, strikes, lockouts or other labor or industrial disturbance, failure or inability to secure materials, supplies or labor through ordinary sources, epidemic/pandemic, quarantine, other health risks, including, but not

limited, to health risks declared or recognized by the Centers for Disease Control, the World Health Organization, any governmental authority or other similar body, earthquake, or other natural disaster, or any cause whatsoever beyond the reasonable control (excluding financial inability) of the Landlord or Tenant, or any of its contractors or other representatives, whether or not similar to any of the causes hereinabove stated.

- 25.24 **OFAC.** Tenant hereby represents, warrants and certifies that: (i) neither it nor its officers, directors, or controlling owners is acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order, the United States Department of Justice, or the United States Treasury Department as a terrorist, “Specifically Designated National or Blocked Person,” or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control (“**SDN**”); (ii) neither it nor its officers, directors or controlling owners is engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation; and (iii) neither it nor its officers, directors or controlling owners is in violation of Presidential Executive Order 13224, the USA PATRIOT Act, (Public Law 107-56), the Bank Secrecy Act, the Money Laundering Control Act or any regulations promulgated pursuant thereto. If the foregoing representations are untrue at any time during the Lease Term, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant. The provisions of this Paragraph shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, Tenant shall have no obligation to make, and does not make, the foregoing representations, warranties or certifications with respect to its owners so long as Tenant’s stock is publicly traded.
- 25.25 **Roof Use by Landlord.** Landlord reserves the right to use the surface of the roof in any manner which does not materially interfere with Tenant's use of the Premises including, but not limited to, installation of telecommunication equipment, solar equipment or any other uses.
- 25.26 **Parking.** Unless otherwise directed by Landlord, Tenant shall have the right to park in common with other tenants of the Project in those areas designated by Landlord for nonreserved parking. During the Term, Tenant shall have the non-exclusive right to use a total of seventy-five (75) unreserved vehicular parking spaces, as parking available for the Building is generally shown on Exhibit K attached hereto. If Tenant requires additional parking during the approximate two-week period around “cyber week” each year, Landlord agrees to use best efforts to make twenty (20) to thirty (30) additional parking spaces available to Tenant, subject to availability and provided that Tenant gives Landlord reasonable prior notice of such parking requirement. Tenant agrees not to overburden the parking facilities and agrees to cooperate with Landlord and other tenants in the use of parking facilities. Landlord may, but is not obligated to, designate exclusive parking spaces for Tenant and other tenants within the Project if Landlord reasonably determines that such designation is necessary. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties, but shall use good faith efforts to enforce such Rules or Regulations on behalf of all tenants. The parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles, SUV’s or pick-up trucks (“**Permitted Size Vehicles**”). Vehicles other than Permitted Size Vehicles shall be parked and loaded or unloaded as directed by Landlord. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant’s employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described in this Section, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord. No vehicle or equipment of any kind shall be dismantled or repaired or serviced on the Common Area.

- 25.27 **Common Area.** The term “**Common Area**” means all areas from time to time designated by Landlord for the general and nonexclusive common use or benefit of Tenant, other tenants of the Project, and Landlord, including, without limitation, roadways, entrances and exits, loading areas, landscaped areas, open areas, park areas, service drives, walkways, common trash areas, vending or mail areas, common pipes, conduits, wires and appurtenant equipment within the Project, maintenance and utility rooms and closets, exterior lighting, exterior utility lines, and parking facilities. Tenant and its employees and visitors shall have the non-exclusive right to use any Common Areas of the Project as constituted from time to time, subject to such reasonable rules and regulations governing the use as Landlord from time to time may prescribe. Notwithstanding anything contained herein to the contrary, Landlord shall have the right to designate certain portions of the Common Areas (including, but not limited to, areas adjacent to a tenant’s premises and/or trailer parking areas located throughout the Project) for the exclusive use of one or more tenants, so long as, in Landlord’s determination, such designation does not materially adversely impact the rights of any other tenant within the Project. Landlord as part of the management fees under the Operating Expenses shall use good faith efforts to enforce the Rules or Regulations for the benefit of the Tenant. Landlord shall not be responsible for non-compliance by any other tenant or occupant of the Project with, or Landlord’s failure to enforce, any of the Rules or Regulations or CC&Rs or any other terms or provisions of such tenant’s or occupant’s lease. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Under no circumstances shall the right herein granted to use the Common Area be deemed to include the right to store any property, temporarily or permanently, in the Common Area. In the event that any unauthorized storage shall occur, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord. Landlord may change the shape and size of the Common Areas, including the addition of, elimination of or change to any improvements located in the Common Areas, so long as such change does not materially adversely affect Tenant’s ability to use the Premises for the Permitted Use.
- 25.28 **Counterparts.** This Lease may be executed in counterparts and shall constitute an agreement binding on all parties notwithstanding that all parties are not signatories to the original or the same counterpart provided that all parties are furnished a copy or copies thereof reflecting the signature of all parties. Transmission of a facsimile or by email of a pdf copy of the signed counterpart of the Lease shall be deemed the equivalent of the delivery of the original, and any party so delivering a facsimile or pdf copy of the signed counterpart of the Lease by email transmission shall in all events deliver to the other party an original signature promptly upon request.
- 25.29 **Light and Air.** This Lease does not grant any rights to light or air over or about the Building. Landlord excepts and reserves exclusively to itself any and all rights not specifically granted to Tenant under this Lease.
- 25.30 **Auctions.** Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises or the Common Areas without first having obtained Landlord’s prior written consent, which Landlord may withhold in its sole discretion. Notwithstanding anything to the contrary in this Lease, Landlord shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.
- 25.31 **Unrelated Business Income.** If Landlord is advised by its counsel at any time that any part of the payments by Tenant to Landlord under this Lease may be characterized as unrelated business income under the United States Internal Revenue Code and its regulations, then Tenant shall enter into any amendment proposed by Landlord to avoid such income, so long as the amendment does not require Tenant to make more payments or accept fewer services from Landlord, than this Lease provides.

- 25.32 **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord.
- 25.33 **Confidentiality.** Subject to compliance with applicable law and regulation, Tenant acknowledges that the content of this Lease and any related documents are confidential information. Tenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Tenant's financial, legal and space planning consultants.
- 25.34 **Energy Usage.** If Tenant (or any party claiming by, through or under Tenant) pays directly to the provider for any energy consumed at the Project, Tenant, promptly upon request, shall deliver to Landlord (or, at Landlord's option, execute and deliver to Landlord an instrument enabling Landlord to obtain from such provider) any data about such consumption at the Building that Landlord may request.
- 25.35 **Zoning.** The Premises is currently zoned M-1 in the City of North Las Vegas. Tenant shall be responsible for verifying and securing any permits or licenses required to operate Tenant's business from the Premises. Landlord makes no representation concerning the suitability of the Premises for Tenant's intended use. It is Tenant's sole responsibility to determine whether or not Lessee's intended product, potential racking, and use are compliant with the current zoning and fire code and for securing all necessary permits and licenses associated with Tenant's use.

*[Signatures on following page.]*

Landlord and Tenant have executed this Lease under seal in two or more counterparts as of the day and year first above written.

**LANDLORD:**

**MATTER CHEYENNE LOGISTICS, LLC,**  
a Delaware limited liability company,

By: CPG LV I LLC, a Nevada limited liability company,  
its Manager

By: CENTRA CRAIG JV, LLC, a Nevada limited  
liability company, its Manager

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

**PRIORITY FULFILLMENT SERVICES, INC.,**  
a Delaware corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

<b>Name</b>	<b>Jurisdiction</b>
Priority Fulfillment Services, Inc.	Delaware
Priority Fulfillment Services of Canada, Inc.	Ontario
PFSweb BV SPRL	Belgium
PFSweb Bulgaria EOOD	Bulgaria
PFSweb GmbH	Germany
PFSweb Global Services Private Limited	India
Business Supplies Distributors Holdings, LLC	Delaware
Supplies Distributors, Inc.	Delaware
Supplies Distributors of Canada, Inc.	Ontario
Supplies Distributors S.A.	Belgium
PFSweb Retail Connect, Inc.,	Delaware
LiveAreaLabs, Inc.	Washington
REV Solutions Inc.	Delaware
REVTECH Solutions India Private Limited	India
CrossView, LLC	Delaware
Conexus, Limited	England
Moda Superbe Limited	England
PFSweb Philippines Services LLC	Philippines



Consent of Independent Registered Public Accounting Firm

PFSweb, Inc.  
Allen, TX

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (No. 333-223737 and 333-239665) and S-3 (No. 333-248722) of PFSweb, Inc. of our reports dated March 31, 2021, relating to the consolidated financial statements, and the effectiveness of PFSweb, Inc.'s internal control over financial reporting, which appear in this Form 10-K. Our report on the effectiveness of internal control over financial reporting expresses an adverse opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2020.

/s/ BDO USA, LLP

Dallas, TX  
March 31, 2021

**CERTIFICATIONS OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350**

I, Michael Willoughby, certify that:

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

Date: March 31, 2021

By: /s/ MICHAEL WILLOUGHBY  
Chief Executive Officer

**CERTIFICATIONS OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350**

I, Thomas Madden, certify that:

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

Date: March 31, 2021

By: /s/ THOMAS J. MADDEN  
Chief Financial Officer

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

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), each of the undersigned officers of PFSweb, Inc. (the "Company"), does hereby certify that:

The Annual Report on Form 10-K for the year ended December 31, 2020 (the "Form 10-K") of the Company fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company as of, and for, the periods presented in the Form 10-K.

March 31, 2021

/s/ Michael Willoughby

Michael Willoughby  
Chief Executive Officer

March 31, 2021

/s/ Thomas J. Madden

Thomas J. Madden  
Chief Financial Officer

The foregoing certification is being furnished as an exhibit to the Form 10-K pursuant to Item 601(b)(32) of Regulation S-K and Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and, accordingly, is not being filed as part of the Form 10-K for purposes of Section 18 of the Securities Exchange Act of 1934, as whether made before or after the date hereof, regardless of any general incorporation language in such filing.

A signed original of this written statement required by Section 906 has been provided to PFSweb, Inc. and will be retained by PFSweb, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.